

# **EXHIBIT 1**

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

AUGUSTINA BLANCO, On Behalf  
of Herself and All Others Similarly  
Situated,

Case No.:

**00406 JGB SPX**

**CLASS ACTION**

Plaintiff,

v.

CVS PHARMACY, INC., a Rhode  
Island Corporation,

Defendant.

1. VIOLATION OF THE UNFAIR  
COMPETITION LAW, Business and  
Professions Code §17200 *et seq.*;
2. VIOLATION OF CONSUMERS  
LEGAL REMEDIES ACT, Civil  
Code §1750 *et seq.*; and
3. BREACH OF EXPRESS  
WARRANTY.

DEMAND FOR JURY TRIAL

1 Plaintiff Augustina Blanco, by and through her attorneys, brings this action on  
2 behalf of herself and all others similarly situated Defendant CVS Pharmacy, Inc. ("CVS  
3 Pharmacy" or "Defendant") and states:

#### 4 NATURE OF ACTION

5 1. CVS Pharmacy markets, sells and distributes a line of joint health dietary  
6 supplements under its "CVS" brand name.<sup>1</sup> All five products bear the name Glucosamine  
7 in bold, large letters, prominently at the top front of each label. The primary purported  
8 active ingredient in all of CVS Pharmacy's Glucosamine Products is glucosamine  
9 hydrochloride. Through an extensive, widespread, comprehensive and uniform  
10 nationwide marketing campaign, CVS Pharmacy promises that its Glucosamine Products  
11 will help renew/nourish cartilage, promote mobility and flexibility and improve joint  
12 comfort. For example, the Advanced Formula Glucosamine Chondroitin Triple Strength  
13 and Advanced Formula Glucosamine Chondroitin Double state that the Products  
14 "nourish cartilage," "promote[] mobility and flexibility", "provide renewed joint  
15 comfort" and that the Products offer "the science of joint care and protection." Similar  
16 statements are made on the other Glucosamine Products, in that the labeling and  
17 packaging states that the Products help to "support[] renewal of cartilage"<sup>2</sup> and "support  
18 joint comfort" (collectively, the "joint health benefit representations").

19 2. No limitations accompany Defendant's joint health benefit representations,  
20 such that the takeaway is that the Glucosamine Products will provide these specific joint  
21 health benefits for all joints in the human body, for adults of all ages and for all manner  
22 and stages of joint related ailments. In this vein, every Glucosamine Product label

23  
24 <sup>1</sup> The Glucosamine Products include, but are not limited to: (1) Glucosamine  
25 Chondroitin Triple Strength with MSM; (2) Glucosamine Chondroitin Double Strength  
26 with MSM; (3) Glucosamine HCL 1500 mg + Boswellia Serrata & Vitamin D; (4)  
27 Advanced Formula Glucosamine Chondroitin Triple Strength; and (5) Advanced Formula  
28 Glucosamine Chondroitin Double Strength (collectively, "the Glucosamine Products" or  
"the Products"). Plaintiff reserves the right to include other Products upon completion of  
discovery.

<sup>2</sup> "Glucosamine also helps to support joint cartilage" (Glucosamine HCL 1500 mg +  
Boswellia Serrata & Vitamin D)

1 depicts a person running and has circles highlighting a variety of joints including the  
2 runners' elbows, hips, knees and shoulders.

3         3. Furthermore, the representations that Defendant makes on the Glucosamine  
4 Products labels with respect to repairing cartilage, improving mobility and flexibility, and  
5 helping with joint discomfort are clearly directed at and, as a result, the majority of  
6 persons who purchase the Glucosamine Products are persons suffering from  
7 osteoarthritis. For example, the University of Chicago Medicine web site describes the  
8 symptoms of osteoarthritis as a breakdown of joint cartilage which in turn interferes with  
9 joint mobility and causes joint pain and stiffness<sup>3</sup> -- these are almost verbatim the  
10 symptoms that Defendant represents that the Glucosamine Products will relieve. Thus,  
11 Defendant's representations, at a minimum, implicitly claim, using lay terminology, that  
12 the Glucosamine Products have a positive effect on the characteristic symptoms of  
13 arthritis.

14         4. In truth, the Glucosamine Products do not relieve joint discomfort, promote  
15 flexibility or mobility or support cartilage repair. Clinical cause and effect studies have  
16 found that the primary active ingredient in the Glucosamine Products, glucosamine, is  
17 ineffective, taken alone or in combination with the other ingredients in the Products, with  
18 regard to the purported joint health benefits represented on the Products' packaging and  
19 labeling. As a recent study sponsored by the National Institute of Health ("NIH")  
20 concluded: "The analysis of the primary outcome measure did not show that  
21 [glucosamine], alone or in combination, was efficacious. . . ." Clegg, D., et al.,  
22 Glucosamine, Chondroitin Sulfate, and the Two in Combination for Painful Knee  
23 Osteoarthritis, 354 New England J. of Med. 795, 806 (2006) ("2006 GAIT Study").  
24 While most of the clinical studies finding a lack of efficacy (using the same amounts of  
25 the ingredients as are in Defendant's Glucosamine Products) were performed on subjects  
26 with arthritis, some were performed on "healthy" subjects. Moreover, experts in the field

27  
28 <sup>3</sup> See <http://www.uchospitals.edu/online-library/content=P00061>.

1 deem the arthritis clinical studies finding the ingredients to be inefficacious to be proxies  
2 for whether the ingredients are effective for both arthritic and non-arthritic users of these  
3 ingredients. As a result, in addition to affirmatively misrepresenting the joint health  
4 benefits of the Glucosamine Products, the failure of Defendant to disclose the facts  
5 regarding these studies also constitutes deception by omission or concealment. Thus,  
6 Defendant's joint health benefit representations and omissions are false, misleading and  
7 reasonably likely to deceive the public.

8 5. Despite the deceptive nature of Defendant's representations, Defendant  
9 conveys its uniform, deceptive message to consumers through a variety of media  
10 including its website and online promotional materials, and, most important, at the point  
11 of purchase, on the front of the Products' packaging and/or labeling where it cannot be  
12 missed by consumers. The only reason a consumer would purchase the Glucosamine  
13 Products is to obtain the advertised joint health benefits, which the Products do not  
14 provide.

15 6. As a result of Defendant's deceptive joint health benefit representations,  
16 consumers – including Plaintiff and members of the proposed Class – have purchased  
17 Products that do not perform as advertised.

18 7. Plaintiff brings this action on behalf of herself and all other similarly  
19 situated consumers to halt the dissemination of this false and misleading advertising  
20 message, correct the false and misleading perception it has created in the minds of  
21 consumers, and obtain redress for those who have purchased the Glucosamine  
22 Products. Based on violations of state unfair competition laws (detailed below) and  
23 breach of express warranties, Plaintiff seeks injunctive and monetary relief for consumers  
24 who purchased the Products.

### 25 **JURISDICTION AND VENUE**

26 8. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The  
27 matter in controversy, exclusive of interest and costs, exceeds the sum or value of  
28

1 \$5,000,000 and is a class action in which there are in excess of 100 class members and  
2 many members of the Class are citizens of a state different from Defendant.

3 9. This Court has personal jurisdiction over CVS Pharmacy because CVS  
4 Pharmacy is authorized to do and does business in California. CVS Pharmacy has  
5 marketed, promoted, distributed, and sold its Glucosamine Products in California and  
6 CVS Pharmacy has sufficient minimum contacts with this State and/or sufficiently avails  
7 itself of the markets in this State through its promotion, sales, distribution and marketing  
8 within this State to render the exercise of jurisdiction by this Court permissible.

9 10. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)  
10 because a substantial part of the events or omissions giving rise to Plaintiff's claims  
11 occurred while she resided in this judicial district. Venue is also proper under 18 U.S.C.  
12 §1965(a) because CVS Pharmacy transacts substantial business in this District.

### 13 PARTIES

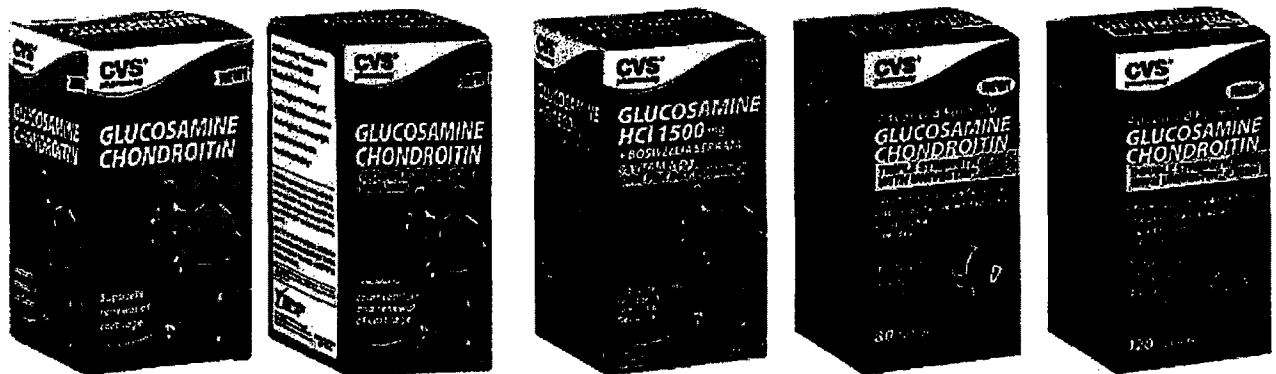
14 11. Plaintiff Augustina Blanco resides in Moreno Valley, California. In or  
15 around February 2012, Plaintiff Blanco was exposed to and saw CVS Pharmacy's  
16 representations by reading the label of the Glucosamine Chondroitin Triple Strength  
17 with MSM product at a CVS store in Moreno Valley, California. In reliance on the  
18 joint health benefit representations on the front of the label, Plaintiff purchased  
19 Glucosamine Chondroitin Triple Strength with MSM and paid approximately \$18-\$20  
20 for the bottle. Had Plaintiff known the truth about Defendant's misrepresentations and  
21 omissions, including that the scientific evidence demonstrated that the Product was not  
22 effective as represented by Defendant, Plaintiff would not have purchased Glucosamine  
23 Chondroitin Triple Strength with MSM. Plaintiff used Glucosamine Chondroitin Triple  
24 Strength with MSM as directed and, consistent with the scientific evidence that the  
25 Product was not effective, the Product did not work. As a result, Plaintiff suffered injury  
26 in fact and lost money.

12. Defendant CVS Pharmacy, Inc. ("CVS Pharmacy") is a corporation organized and existing under the laws of the state of Rhode Island, and which has its principal place of business in the state of Rhode Island. CVS Pharmacy is a subsidiary of CVS Caremark Corporation. CVS Pharmacy promoted, marketed and sold the Glucosamine Chondroitin products throughout the United States, including California.

### **FACTUAL ALLEGATIONS**

#### ***The Glucosamine Chondroitin Products***

13. CVS Pharmacy is one of the largest pharmacy retailers in the United States, operating over 6,900 CVS/pharmacy and Longs Drugs retail stores, mail order, retail outlets, and health clinics where it sells retail goods, and CVS.com. This lawsuit concerns five of those products: (1) Glucosamine Chondroitin Triple Strength with MSM; (2) Glucosamine Chondroitin Double Strength with MSM; (3) Glucosamine HCL 1500 mg + Boswellia Serrata & Vitamin D; (4) Advanced Formula Glucosamine Chondroitin Triple Strength; and (5) Advanced Formula Glucosamine Chondroitin Double Strength. The Glucosamine Chondroitin products are available in 30, 50, 60, 80, 120 and 150 count bottles. Screen shots of the Glucosamine Products appear as follows:



14. Since the Products' launch, CVS Pharmacy has consistently conveyed the message to consumers throughout the United States, including California that the Glucosamine Products help to renew/nourish cartilage, promote mobility and flexibility and improve "joint comfort," simply by taking the recommended number of tablets each

1 day. They do not. CVS Pharmacy's joint health benefit representations are false,  
2 misleading, and reasonably likely to deceive the public.

3 15. The active ingredient in all the Glucosamine Products is glucosamine  
4 hydrochloride. As more fully set forth below, the scientific evidence is that glucosamine,  
5 taken alone or in combination, does not provide the joint health benefits represented by  
6 CVS Pharmacy.

7 16. In addition to the primary active ingredient, Defendant's Glucosamine  
8 Products contains lesser amounts of other ingredients, including: chondroitin sulfate;<sup>4</sup>  
9 methylsulfonylmethane ("MSM");<sup>5</sup> hyaluronic acid;<sup>6</sup> Boswellia Serrata;<sup>7</sup> and Univestin,  
10 a dual bioflavanoid antioxidant system consisting of Chinese Skullcap Extract, Black  
11 Catechu Extract and Maltodextrin.<sup>8</sup> As more fully discussed below, these ingredients are  
12 also not effective in providing the joint health benefits represented by Defendant

13 17. Even though numerous clinical studies have found that the primary  
14 ingredient in CVS Pharmacy's Glucosamine Products, glucosamine, alone or in  
15 combination, is ineffective, CVS Pharmacy continues to state on the Products' packaging  
16 and labeling that the Glucosamine Products helps to, inter alia: renew/nourish cartilage,  
17 promote mobility and flexibility and improve joint comfort without any limitation on  
18 which joints and without any limitation on what stages of joint related ailments. Front,  
19 back, and side shots of a representative Advanced Formula Glucosamine Chondroitin  
20 Triple Strength label appear as follows:

21  
22 <sup>4</sup> Glucosamine HCL 1500 mg + Boswellia Serrata & Vitamin D is the only Product that  
does not contain chondroitin sulfate.

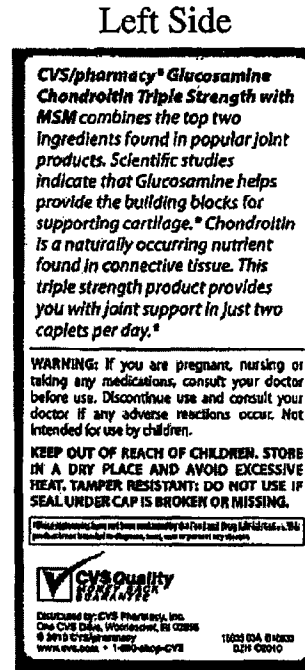
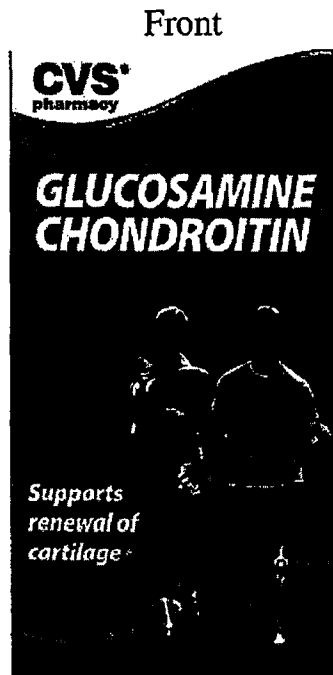
23 <sup>5</sup> Advanced Formula Glucosamine Chondroitin Triple Strength and Glucosamine HCL  
24 1500 mg + Boswellia Serrata & Vitamin D are the only Products that do not contain  
MSM.

25 <sup>6</sup> Glucosamine HCL 1500 mg + Boswellia Serrata & Vitamin D is the only Product that  
does not contain hyaluronic acid.

26 <sup>7</sup> Advanced Formula Glucosamine Chondroitin Triple Strength and Advanced Formula  
Glucosamine Chondroitin Double Strength are the only Products that does not contain  
*Boswellia Serrata*.

27 <sup>8</sup> Advanced Formula Glucosamine Chondroitin Triple Strength and Advanced Formula  
28 Glucosamine Chondroitin Double Strength are the only Products that contain Univestin.





18. Defendant's Product labels also contains a fine print "disclaimer" at the bottom of the side panel stating, "These statements have not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure, or prevent any disease." This disclaimer language is required by Federal law and FDA regulations where a dietary supplement manufacturer makes "structure or function" statements about its product. See 21 C.F.R. § 101.93. Under applicable Federal Regulations, "structure and function" statements, which the disclaimer language accompanies, must be limited to a description of the role that a dietary ingredient is "intended to affect the structure or function in humans." 21 U.S.C. § 343 (r)(6).

***Scientific Studies Confirm The Glucosamine Products Are Not Effective.***

19. Independent studies published, at least as early as 2004, have found that glucosamine, alone or in combination, is not effective in providing the represented joint health benefits.

1        20. For example, a 2004 study by McAlindon et al., entitled Effectiveness of  
2 Glucosamine For Symptoms of Knee Osteoarthritis: Results From an Internet-Based  
3 Randomized Double-Blind Controlled Trial, 117(9) Am. J. Med. 649 (Nov. 2004),  
4 concluded that glucosamine was no more effective than placebo in treating the symptoms  
5 of knee osteoarthritis – in short, it was ineffective.

6        21. Also as early as 2004, many studies confirmed there is a significant  
7 “placebo” effect with respect to consumption of products represented to be effective in  
8 providing joint health benefits such as Defendant’s Product – 30% and more of persons  
9 who took placebos in these studies believed that they were experiencing joint health  
10 benefits when all they were taking was a placebo. In this regard, a 2004 study by Cibere  
11 et al., entitled Randomized, Double-Blind, Placebo-Controlled Glucosamine  
12 Discontinuation Trial In Knee Osteoarthritis, 51(5) Arthritis Care & Research 738-45  
13 (Oct. 15, 2004), studied users of glucosamine who had claimed to have experienced at  
14 least moderate improvement after starting glucosamine. These patients were divided into  
15 two groups – one that continued using glucosamine and one that was given a placebo.  
16 For six months, the primary outcome observed was the proportion of disease flares in the  
17 glucosamine and placebo groups. A secondary outcome was the time to disease flare.  
18 The study results reflected that there were no differences in either the primary or  
19 secondary outcomes for glucosamine and placebo. The authors concluded that the  
20 study provided no evidence of symptomatic benefit from continued use of glucosamine –  
21 in other words, any prior perceived benefits were due to the placebo effect and not  
22 glucosamine.

23        22. In the 2006 Gait Study, the study authors rigorously evaluated the  
24 effectiveness of glucosamine and chondroitin, alone and in combination, on osteoarthritis  
25 for six months. According to the study’s authors, “The analysis of the primary outcome  
26 measure did not show that either supplement, alone or in combination, was efficacious. .  
27  
28

1 ." 2006 GAIT Study at 806.9 Subsequent GAIT studies in 2008 and 2010 reported that  
2 glucosamine and chondroitin did not rebuild cartilage<sup>10</sup> and were otherwise ineffective –  
3 even in patients with moderate to severe knee pain for which the 2006 reported results  
4 were inconclusive. See Sawitzke, A.D., et al., The Effect of Glucosamine and/or  
5 Chondroitin Sulfate on the Progression of Knee Osteoarthritis: A GAIT Report, 58(10) J.  
6 Arthritis Rheum. 3183–91 (Oct. 2008); Sawitzke, A.D., Clinical Efficacy And Safety Of  
7 Glucosamine, Chondroitin Sulphate, Their Combination, Celecoxib Or Placebo Taken  
8 To Treat Osteoarthritis Of The Knee: 2-Year Results From GAIT, 69(8) Ann Rheum.  
9 Dis. 1459-64 (Aug. 2010).

10 23. The GAIT studies are consistent with the reported results of prior and  
11 subsequent studies. For example, a study by Rozendaal et al., entitled Effect of  
12 Glucosamine Sulfate on Hip Osteoarthritis, 148 Ann. of Intern. Med. 268-77 (2008),  
13 assessing the effectiveness of glucosamine on the symptoms and structural progression of  
14 hip osteoarthritis during 2 years of treatment, concluded that glucosamine was no better  
15 than placebo in reducing symptoms and progression of hip osteoarthritis.

16 24. A 2010 meta-analysis by Wandel et al. entitled Effects of Glucosamine,  
17 Chondroitin, Or Placebo In Patients With Osteoarthritis Or Hip Or Knee: Network Meta-  
18 Analysis, BMJ 341:c4675 (2010), examined prior studies involving glucosamine and  
19 chondroitin, alone or in combination, and whether they relieved the symptoms or  
20 progression of arthritis of the knee or hip. The study authors reported that glucosamine  
21 and chondroitin, alone or in combination, did not reduce joint pain nor have an impact on  
22 the narrowing of joint space: "Our findings indicate that glucosamine, chondroitin, and  
23

24 <sup>9</sup> The 2006 Gait Study was funded by the National Center for Complementary &  
25 Alternative Medicine and the National Institute of Arthritis and Musculoskeletal and Skin  
Diseases, two components of NIH.

26 <sup>10</sup> To a similar effect a study by Kwok, et al., entitled The Joints On Glucosamine (JOG)  
27 Study: A Randomized, Double-Blind, Placebo-Controlled Trial To Assess The Structural  
28 Benefit Of Glucosamine In Knee Osteoarthritis Based On 3T MRI, 60 Arthritis Rheum  
725 (2009), concluded that glucosamine was not effective in preventing the worsening of  
cartilage damage.

1 their combination do not result in a relevant reduction of joint pain nor affect joint space  
2 narrowing compared with placebo.” Id. at 8. The authors went as far to say, “We believe  
3 it unlikely that future trials will show a clinically relevant benefit of any of the evaluated  
4 preparations.” Id.

5 25. On July 7, 2010, Wilkens et al., reported that there was no difference  
6 between placebo and glucosamine for the treatment of low back pain and lumbar  
7 osteoarthritis and that neither glucosamine nor placebo were effective in reducing  
8 pain related disability. The researchers also stated that, “Based on our results, it seems  
9 unwise to recommend glucosamine to all patients” with low back pain and lumbar  
10 osteoarthritis. Wilkens et al., Effect of Glucosamine on Pain-Related Disability in  
11 Patients With Chronic Low Back Pain and Degenerative Lumbar Osteoarthritis, 304(1)  
12 JAMA 45-52 (July 7, 2010).

13 26. In 2011, Miller and Clegg, after surveying the clinical study history of  
14 glucosamine and chondroitin reported that, “The cost-effectiveness of these dietary  
15 supplements alone or in combination in the treatment of OA has not been demonstrated  
16 in North America.” Miller, K. and Clegg, D., Glucosamine and Chondroitin Sulfate,  
17 Rheum. Dis. Clin. N. Am. 37 (2011) 103-118.

18 27. While hyaluronic acid has been proven to be effective when directly injected  
19 into joints, due to its high molecular weight, when taken orally, it cannot be absorbed  
20 into the human bloodstream let alone beneficially affect joints

21 28. Boswellia Serrata – Indian Frankincense – is essentially a witch doctor  
22 potion and is not effective in providing any joint health benefits

23 ***The Impact of CVS Pharmacy’s Wrongful Conduct***

24 29. Despite clinical studies that show the ingredients in the Glucosamine  
25 Products are ineffective, Defendant conveyed and continues to convey one uniform  
26 message: the Glucosamine Products help to renew/nourish cartilage, promote mobility  
27 and flexibility and improve “joint comfort.”  
28

1           30. As the manufacturer and/or distributor of the Glucosamine Products,  
2 Defendant possesses specialized knowledge regarding the content and effects of the  
3 ingredients contained in its Products and is in a superior position to learn of the effects –  
4 and has learned of the effects, or lack thereof, – its Products has on consumers.

5           31. Specifically, Defendant knew, but failed to disclose, that the Glucosamine  
6 Products do not provide the joint health benefits represented and that well-conducted,  
7 clinical studies have found the ingredients in the Glucosamine Products to be ineffective  
8 in providing the joint health benefits represented by Defendant.

9           32. Plaintiff and Class members have been and will continue to be deceived or  
10 misled by Defendant's deceptive joint health benefit representations. Plaintiff purchased  
11 and consumed a Glucosamine Product during the Class period and in doing so, read and  
12 considered the Product's label and based her decision to purchase the Product on the joint  
13 health benefit representations on the Product packaging. Defendant's joint health benefit  
14 representations and omissions were a material factor in influencing Plaintiff's decision to  
15 purchase and consume a Glucosamine Product.

16           33. The only purpose behind purchasing the Glucosamine Products is to obtain  
17 some or all of the represented joint health benefits. There is no other reason for Plaintiff  
18 and the Class to have purchased the Products as the Products are not represented to  
19 provide any benefits and Plaintiff and the Class would not have purchased the Products  
20 had they known Defendant's joint health benefit statements were false and misleading  
21 and that clinical cause and effect studies have found the ingredients to be ineffective for  
22 the represented joint health benefits.

23           34. As a result, Plaintiff and the Class members have been injured in fact in  
24 their purchases of the Glucosamine Products in that they were deceived into purchasing  
25 Products that do not perform as advertised.

26           35. Defendant, by contrast, reaped enormous profit from its false marketing and  
27 sale of the Glucosamine Products.  
28

**CLASS DEFINITION AND ALLEGATIONS**

36. Plaintiff brings this action on behalf of herself and all other similarly situated Class members pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class against CVS Pharmacy violations of California law and similar laws in other states:

**Multi-State Class**

All persons in California and states with similar laws, who, within the applicable statute of limitations under their respective state's consumer fraud act, purchased the Glucosamine Products.

Excluded from the Class are CVS Pharmacy, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the Glucosamine Products for resale.

37. In the alternative, Plaintiff brings this action on behalf of herself and all other similarly situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure and seeks certification of the following Class:

**California Class**

All California residents who, within the applicable statute of limitations, purchased the Glucosamine Products.

Excluded from the Class are CVS Pharmacy, its parents, subsidiaries, affiliates, officers and directors, and those who purchased the Glucosamine Products for resale.

38. Numerosity. The members of the Class are so numerous that joinder of all members of the Class is impracticable. Plaintiff is informed and believes that the proposed Class contains thousands of purchasers of the Glucosamine Products who have been damaged by CVS Pharmacy's conduct as alleged herein. The precise number of Class members is unknown to Plaintiff.

39. Existence and Predominance of Common Questions of Law and Fact. This action involves common questions of law and fact, which predominate over any questions affecting individual Class members. These common legal and factual questions include, but are not limited to, the following:

1           (1) whether the claims discussed above are true, or are misleading, or  
2 objectively reasonably likely to deceive;

3           (2) whether CVS Pharmacy alleged conduct violates public policy;

4           (3) whether the alleged conduct constitutes violations of the laws  
5 asserted;

6           (4) whether CVS Pharmacy engaged in false or misleading advertising;

7           (5) whether Plaintiff and Class members have sustained monetary loss  
8 and the proper measure of that loss; and

9           (6) whether Plaintiff and Class members are entitled to other appropriate  
10 remedies, including corrective advertising and injunctive relief.

11       40. Typicality. Plaintiff's claims are typical of the claims of the members of the  
12 Class because, inter alia, all Class members were injured through the uniform misconduct  
13 described above, were subject to CVS Pharmacy's deceptive joint health benefit  
14 representations including the representations that accompanied each and every box of the  
15 Glucosamine Products. Plaintiff is advancing the same claims and legal theories on  
16 behalf of herself and all members of the Class.

17       41. Adequacy of Representation. Plaintiff will fairly and adequately protect the  
18 interests of the members of the Class. Plaintiff has retained counsel experienced in  
19 complex consumer class action litigation, and Plaintiff intends to prosecute this action  
20 vigorously. Plaintiff has no adverse or antagonistic interests to those of the Class.

21       42. Superiority. A class action is superior to all other available means for the  
22 fair and efficient adjudication of this controversy. The damages or other financial  
23 detriment suffered by individual Class members is relatively small compared to the  
24 burden and expense that would be entailed by individual litigation of its claims against  
25 CVS Pharmacy. It would thus be virtually impossible for the Class, on an individual  
26 basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class  
27 members could afford such individualized litigation, the court system could not.

1 Individualized litigation would create the danger of inconsistent or contradictory  
2 judgments arising from the same set of facts. Individualized litigation would also  
3 increase the delay and expense to all parties and the court system from the issues raised  
4 by this action. By contrast, the class action device provides the benefits of adjudication  
5 of these issues in a single proceeding, economies of scale, and comprehensive  
6 supervision by a single court, and presents no unusual management difficulties under the  
7 circumstances here.

8 43. Plaintiff seeks preliminary and permanent injunctive and equitable relief on  
9 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin  
10 and prevent CVS Pharmacy from engaging in the acts described, and requiring CVS  
11 Pharmacy to provide full restitution to Plaintiff and Class members.

12 44. Unless a Class is certified, CVS Pharmacy will retain monies received as a  
13 result of its conduct that were taken from Plaintiff and Class members. Unless a Class-  
14 wide injunction is issued, CVS Pharmacy will continue to commit the violations alleged,  
15 and the members of the Class and the general public will continue to be deceived.

16 45. CVS Pharmacy has acted and refused to act on grounds generally applicable  
17 to the Class, making appropriate final injunctive relief with respect to the Class as a  
18 whole.

19 **COUNT I**  
20 **Violation of Business & Professions Code §17200, et seq.**

21 46. Plaintiff repeats and re-alleges the allegations contained in the paragraphs  
22 above, as if fully set forth herein.

23 47. Plaintiff brings this claim individually and on behalf of the Class.

24 48. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
25 property as a result of CVS Pharmacy's conduct because she purchased a Glucosamine  
26 Product in reliance on CVS Pharmacy's joint health benefit statements detailed above,  
27 but did not receive a product that provided the represented joint health benefits.  
28



1       49. The Unfair Competition Law, Business & Professions Code § 17200, et seq.  
2 (“UCL”), prohibits any “unlawful,” “fraudulent” or “unfair” business act or practice and  
3 any false or misleading advertising.

4       50. In the course of conducting business, CVS Pharmacy committed “unlawful”  
5 business practices by, inter alia, making the joint health benefit representations (which  
6 also constitute advertising within the meaning of § 17200) and omissions of material  
7 facts, as set forth more fully herein, and violating Civil Code §§ 1572, 1573, 1709, 1711,  
8 1770(a)(5), (7), (9) and (16) and Business & Professions Code §§ 17200, et seq. Plaintiff  
9 and the Class reserve the right to allege other violations of law, which constitute other  
10 unlawful business acts or practices. Such conduct is ongoing and continues to this date.

11       51. In the course of conducting business, CVS Pharmacy committed “unfair”  
12 business practices by, inter alia, making the joint health benefit representations (which  
13 also constitute advertising within the meaning of § 17200) and omissions of material  
14 facts regarding The Glucosamine Products in its advertising campaign, including the  
15 Products’ packaging, as set forth more fully herein. There is no societal benefit from  
16 false advertising, only harm. Plaintiff and other Class members paid money for promised  
17 joint health benefits which they did not receive. While Plaintiff and Class members were  
18 harmed, CVS Pharmacy was unjustly enriched by its false joint health benefits  
19 misrepresentations and omissions. Because the utility of CVS Pharmacy’s conduct  
20 (zero) is outweighed by the gravity of the harm Plaintiff and Class Members suffered,  
21 CVS Pharmacy’s conduct is “unfair” having offended an established public policy.  
22 Further, CVS Pharmacy engaged in immoral, unethical, oppressive, and unscrupulous  
23 activities that are substantially injurious to consumers.

24       52. Further, as stated in this Complaint, Plaintiff alleges violations of consumer  
25 protection, unfair competition and truth in advertising laws, resulting in harm to  
26 consumers. CVS Pharmacy’s acts and omissions also violate and offend the public  
27 policy against engaging in false and misleading advertising, unfair competition and  
28

1 deceptive conduct towards consumers. This conduct constitutes violations of the unfair  
2 prong of Business & Professions Code § 17200, et seq.

3 53. There were reasonably available alternatives to further CVS Pharmacy's  
4 legitimate business interests, other than the conduct described herein.

5 54. Business & Professions Code § 17200, et seq., also prohibits any "fraudulent  
6 business act or practice."

7 55. In the course of conducting business, CVS Pharmacy committed "fraudulent  
8 business act or practices" by, inter alia, making the joint health benefit representations  
9 (which also constitute advertising within the meaning of § 17200) and omissions of  
10 material facts regarding The Glucosamine Products in its advertising campaign, including  
11 the Product's packaging, as set forth more fully herein. CVS Pharmacy misrepresented  
12 on each and every Glucosamine Product box that its Products help to renew/nourish  
13 cartilage, promote mobility and flexibility and provide "joint comfort," when, in fact, the  
14 competent scientific evidence is that the ingredients in the Glucosamine Products are not  
15 efficacious and do not work as represented.

16 56. CVS Pharmacy's actions, claims, omissions and misleading statements, as  
17 more fully set forth above, were also false, misleading and/or likely to deceive the  
18 consuming public within the meaning of Business & Professions Code § 17200, et seq.

19 57. Plaintiff and other members of the Class have in fact been deceived by CVS  
20 Pharmacy's material joint health benefit representations and omissions. CVS Pharmacy's  
21 deception has caused harm to Plaintiff and other members of the Class who purchased  
22 the Glucosamine Products. Plaintiff and the other Class members have suffered injury in  
23 fact and lost money as a result of these unlawful, unfair, and fraudulent practices.

24 58. CVS Pharmacy knew, or should have known, that its material  
25 representations and omissions would be likely to deceive the consuming public and result  
26 in consumers purchasing CVS Pharmacy's Glucosamine Products and, indeed, intended  
27 to deceive consumers.  
28

59. As a result of its deception, CVS Pharmacy has been able to reap unjust revenue and profit.

60. Unless restrained and enjoined, CVS Pharmacy will continue to engage in the above-described conduct. Accordingly, injunctive relief is appropriate.

61. Plaintiff, on behalf of herself and all others similarly situated, and the general public, seeks restitution of all money obtained from Plaintiff and the members of the Class collected as a result of unfair competition, an injunction prohibiting CVS Pharmacy from continuing such practices, corrective advertising and all other relief this Court deems appropriate, consistent with Business & Professions Code § 17203.

**COUNT II**

**Violations of the Consumers Legal Remedies Act – Civil Code §1750 *et seq.***

62. Plaintiff repeats and re-alleges the allegations contained in the paragraphs above, as if fully set forth herein.

63. Plaintiff brings this claim individually and on behalf of the Class.

64. This cause of action is brought pursuant to the Consumers Legal Remedies Act, California Civil Code §1750, et seq. (the “Act”), and similar laws in other states. Plaintiff is a “consumer” as defined by California Civil Code §1761(d). The Glucosamine Products are “goods” within the meaning of the Act.

65. CVS Pharmacy violated and continues to violate the Act by engaging in the following practices proscribed by California Civil Code §1770(a) in transactions with Plaintiff and the Class which were intended to result in, and did result in, the sale of the Glucosamine Products:

(5) Representing that [the Glucosamine Products have] . . . approval, characteristics, . . . uses [and] benefits . . . which [they do] not have . . . .

\* \* \*

(7) Representing that [the Glucosamine Products are] of a particular standard, quality or grade . . . if [it is] of another.

\* \* \*



1        73. Plaintiff brings this claim individually and on behalf of the Class.

2        74. The Uniform Commercial Code Section 2-313 provides that an affirmation  
3 of fact or promise, including a description of the goods, becomes part of the basis of the  
4 bargain and creates an express warranty that the goods shall conform to the promise and  
5 to the description.

6        75. At all times, California and similar state laws have codified and adopted the  
7 provisions the Uniform Commercial Code governing the express warranty of  
8 merchantability.

9        76. CVS Pharmacy expressly warranted in its advertising campaign, including,  
10 inter alia, on each and every box of the Glucosamine Products that the Products, inter  
11 alia, help to renew/nourish cartilage, promote mobility and flexibility and improve "joint  
12 comfort." These joint health benefit representations made by CVS Pharmacy are  
13 affirmations of fact that became part of the basis of the bargain and created an express  
14 warranty that the goods would conform to the stated promises. Plaintiff placed  
15 importance on CVS Pharmacy's joint health benefit representations.

16        77. All conditions precedent to CVS Pharmacy's liability under this contract  
17 have been performed by Plaintiff and the Class.

18        78. CVS Pharmacy breached the terms of this contract, including the express  
19 warranties, with Plaintiff and the Class by not providing Products that would support  
20 renew/nourish cartilage, promote mobility or flexibility or improve joint comfort as  
21 represented.

22        79. As a result of CVS Pharmacy's breach of its contract, Plaintiff and the Class  
23 have been damaged in the amount of the price of the Product they purchased.

24                    **PRAYER FOR RELIEF**

25        Wherefore, Plaintiff prays for a judgment:

26        A.     Certifying the Class as requested herein;

27        B.     Awarding Plaintiff and the proposed Class members damages;  
28

1 C. Awarding restitution and disgorgement of CVS Pharmacy's revenues to  
2 Plaintiff and the proposed Class members;

3 D. Awarding injunctive relief as permitted by law or equity, including enjoining  
4 CVS Pharmacy from continuing the unlawful practices as set forth herein, and directing  
5 CVS Pharmacy to identify, with Court supervision, victims of its conduct and pay them all  
6 money it is required to pay;

7 E. Ordering CVS Pharmacy to engage in a corrective advertising campaign;

8 F. Awarding attorneys' fees and costs; and

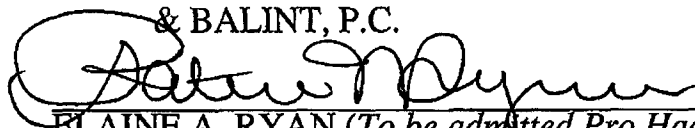
9 G. Providing such further relief as may be just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by  
12 law.

13 DATED: March 4, 2013

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.



ELAINE A. RYAN (*To be admitted Pro Hac Vice*)

PATRICIA N. SYVERSON (203111)

LINDSEY M. GOMEZ-GRAY (*To be admitted Pro Hac Vice*)

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(Of Counsel Levin Fishbein Sedran & Berman)

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# **EXHIBIT A**





**BONNETT FAIRBOURN  
FRIEDMAN & BALINT PC**

JERRY C. BONNETT  
FRANCIS J. BALINT, JR.  
C. KEVIN DYKSTRA  
ANDREW Q. EVERROAD  
JONATHAN S. WALLACK  
CHRISTINA L. BANNON  
WILLIAM F. KING  
ANDREW M. EVANS  
KEVIN R. HANGER

WILLIAM G. FAIRBOURN  
VAN BUNCH  
ELAINE A. RYAN  
KATHRYN A. HONECKER  
GUY A. HANSON  
MANFRED P. MUECKE<sup>1</sup>  
TONNA K. FARRAR<sup>2</sup>  
TY D. FRANKEL  
ERIC D. ZARD

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ROBERT J. SPURLOCK  
WENDY J. HARRISON  
PATRICIA N. SYVERSON  
KIMBERLY C. PAGE  
TODD D. CARPENTER<sup>1</sup>  
T. BRENT JORDAN<sup>3</sup>  
LINDSEY M. GOMEZ

MICHAEL N. WIDENER, Of Counsel

<sup>1</sup> Admitted Only in California  
<sup>2</sup> Admitted Only in California, Missouri  
and Kansas  
<sup>3</sup> Admitted Only in Pennsylvania

March 4, 2013

**VIA CERTIFIED MAIL (RETURN RECEIPT)**  
**(RECEIPT NO. 7009 0080 0000 4081 6384)**

CVS Pharmacy, Inc.  
c/o C T Corporation System  
818 W. Seventh Street  
Los Angeles, California 90017

**VIA CERTIFIED MAIL (RETURN RECEIPT)**  
**(RECEIPT NO. 7011 0470 0002 5152 4461)**

CVS Pharmacy, Inc.  
General Counsel  
One CVS Drive  
Woonsocket, Rhode Island 02895

Re: Blanco v. CVS Pharmacy, Inc.

Dear Sirs or Madams:

Our law firm together with the Levin, Fishbein, Sedran & Berman law firm represent Augustina Blanco and all other similarly situated consumers in an action against CVS Pharmacy, Inc. ("CVS") arising out of, *inter alia*, misrepresentations, either express or implied, by CVS to consumers that its CVS Glucosamine Products<sup>1</sup> helps renew/nourish cartilage, promote mobility and flexibility and improve joint comfort.

Ms. Blanco and others similarly situated purchased the CVS Glucosamine Products unaware that CVS' advertising campaign, including *inter alia*, representations prominently featured on each and every Product that the Products "nourish cartilage," support[] renewal of cartilage", "promote[] mobility and flexibility" and "provide renewed joint comfort" (hereafter the "joint health benefit representations") are false. Several well-conducted clinical studies have found no causative link between the primary purported active ingredients in the Glucosamine Products do not provide the joint health benefits represented by CVS. The full claims, including

<sup>1</sup> The CVS Glucosamine Products include, but it not limited to: (1) Glucosamine Chondroitin Triple Strength with MSM; (2) Glucosamine Chondroitin Double Strength with MSM; (3) Glucosamine HCL 1500 mg + Boswellia Serrata & Vitamin D; (4) Advanced Formula Glucosamine Chondroitin Triple Strength; and (5) Advanced Formula Glucosamine Chondroitin Double Strength (collectively, "the Glucosamine Products" or "the Products").

the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

CVS' joint health benefit representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by CVS with the intent to induce the consuming public to purchase the Glucosamine Products. The joint health benefit representations do not assist consumers; they simply mislead them.

CVS's joint health benefit representations violate California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

- (5) Representing that [the Glucosamine Products] . . . characteristics, . . . uses [or] benefits. . . which [they do] not have.

\* \* \*

- (7) Representing that [the Glucosamine Products are] of a particular standard, quality or grade, . . . if [it is] of another.

\* \* \*

- (9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

- (16) Representing that [the Glucosamine Products have] been supplied in accordance with a previous representation when [they have] not.

California Civil Code §1770(a)(5)-(16).

CVS's joint health benefit representations also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all others similarly situated that CVS immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, CVS should offer to refund the purchase price to all consumer purchasers of the Glucosamine Products, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not

received. These damage claims also would include claims under already asserted breach of warranty theories, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that CVS address these violations immediately.

CVS must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the Glucosamine Products;
2. Notify all such purchasers so identified that upon their request, CVS will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for the Glucosamine Products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the Glucosamine Product purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that the Glucosamine Products help to renew/nourish cartilage, promote mobility and flexibility and improve joint comfort. when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patricia N. Syverson".

Patricia N. Syverson  
For the Firm

PNS:lmg  
Enclosures



**BONNETT FAIRBOURN  
FRIEDMAN & BALINT PC**

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\* \* \*

- (7) Representing that [the Glucosamine Products are] of a particular standard, quality or grade, . . . if [it is] of another.

\* \* \*

- (9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

- (16) Representing that [the Glucosamine Products have] been supplied in accordance with a previous representation when [they have] not.

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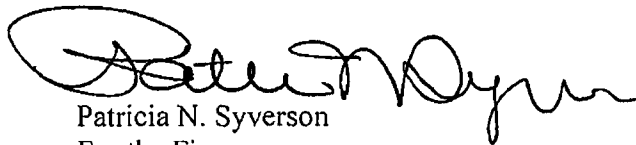
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1. Identify or make a reasonable attempt to identify purchasers of the Glucosamine Products;
2. Notify all such purchasers so identified that upon their request, CVS will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for the Glucosamine Products, plus interest, costs and fees;
3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all the Glucosamine Product purchasers who so request; and
4. Cease from expressly or impliedly representing to consumers that the Glucosamine Products help to renew/nourish cartilage, promote mobility and flexibility and improve joint comfort. when there is no reasonable basis for so claiming, as more fully described in the enclosed Complaint.

We await your response.

Very truly yours,



Patricia N. Syverson  
For the Firm

PNS:lmg  
Enclosures

## **EXHIBIT B**

BONNETT, FAIRBOURN, FRIEDMAN  
& BALINT, P.C.

ELAINE A. RYAN (*To be admitted Pro Hac Vice*)

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PATRICIA N. SYVERSON (203111)

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Phoenix, Arizona 85016

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Facsimile: (602) 274-1199

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& BALINT, P.C.

MANFRED P. MUECKE (222893)

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STEWART M. WELTMAN LLC

STEWART M. WELTMAN (*To be admitted Pro Hac Vice*)

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Chicago, IL 6060

Telephone: 312-588-5033

(Of Counsel Levin Fishbein Sedran & Berman)

*Attorneys for Plaintiff*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AUGUSTINA BLANCO, On Behalf  
of Herself and All Others Similarly  
Situated,

Plaintiff,

v.

CVS PHARMACY, INC., a Rhode  
Island Corporation,

Defendant.

Case No.:

CLASS ACTION

DECLARATION OF PATRICIA N.  
SYVERSON PURSUANT TO  
CALIFORNIA CIVIL CODE §1780(d)



1 I, Patricia N. Syverson, declare as follows:

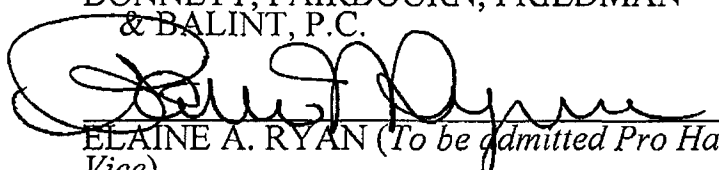
2 1. I am an attorney duly licensed to practice before all of the courts of  
3 the State of California. I am a shareholder at the law firm of Bonnett, Fairbourn,  
4 Friedman & Balint, P.C., the counsel of record for plaintiff in the above-entitled  
5 action.  
6

7  
8 2. Defendant CVS Pharmacy, Inc. has done and is doing business in  
9 the Central District of California. Such business includes the marketing,  
10 distributing and sale of its CVS Glucosamine joint dietary supplements.<sup>1</sup>  
11 Furthermore, Plaintiff Blanco purchased a product in the CVS Glucosamine line  
12 in Moreno Valley, California.  
13

14  
15 I declare under penalty of perjury under the laws of the State of California  
16 that the foregoing is true and correct.  
17

18 Executed this 4th day of March 2013, at Phoenix, Arizona.

19 BONNETT, FAIRBOURN, FRIEDMAN  
20 & BALINT, P.C.

21   
22 ELAINE A. RYAN (To be admitted Pro Hac  
23 Vice)

24 [eryan@bffb.com](mailto:eryan@bffb.com)

25 PATRICIA N. SYVERSON (203111)

26 [psyverson@bffb.com](mailto:psyverson@bffb.com)

27 LINDSEY M. GOMEZ-GRAY (To be admitted  
28 Pro Hac Vice)

[lgomez-gray@bffb.com](mailto:lgomez-gray@bffb.com)

1 The CVS Glucosamine product line includes, but is not limited to: (1) Glucosamine Chondroitin Triple Strength with MSM; (2) Glucosamine Chondroitin Double Strength with MSM; (3) Glucosamine HCL 1500 mg + Boswellia Serrata & Vitamin D; (4) Advanced Formula Glucosamine Chondroitin Triple Strength; and (5) Advanced Formula Glucosamine Chondroitin Double Strength

1 2325 E. Camelback Road, Suite 300  
2 Phoenix, Arizona 85016  
3 Telephone: (602) 274-1100  
4 Facsimile: (602) 274-1199

5 BONNETT, FAIRBOURN, FRIEDMAN  
6 & BALINT, P.C.  
7 MANFRED P. MUECKE (222893)  
8 mmuecke@bffb.com  
9 600 W. Broadway, Suite 900  
10 San Diego, California 92101 Telephone: (619)  
11 756-7748  
12 Facsimile: (602) 274-1199

13 STEWART M. WELTMAN LLC  
14 STEWART M. WELTMAN (*To be admitted*  
15 *Pro Hac Vice*)  
16 sweltman@weltmanlawfirm.com  
17 53 W. Jackson Suite 364  
18 Chicago, IL 6060  
19 Telephone: 312-588-5033  
20 (Of Counsel Levin Fishbein Sedran & Berman)  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AUGUSTINA BLANCO, on behalf of herself and all  
others similarly situated

v.

PLAINTIFF(S)

ED CV 13 - 00406 JGB SPx

CVS PHARMACY, INC., a Rhode Island Corp.  
DEFENDANT(S).

SUMMONS

TO: THE ABOVE-NAMED DEFENDANT(S):

YOU ARE HEREBY SUMMONED and required to file with this court and serve upon plaintiff's attorney  
Patricia N. Syverson, whose address is:

Bonnett Fairbourn Friedman & Balint  
2325 E Camelback Rd, #300  
Phoenix, AZ 85016  
602-274-1100

an answer to the ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim  
which is herewith served upon you within \_\_\_\_\_ days after service of this Summons upon you, exclusive  
of the day of service. If you fail to do so, judgement by default will be taken against you for the relief  
demanded in the complaint.

Clerk, U.S. District Court

Dated: MAR - 4 2013

By: *A. Manda*

Deputy Clerk

(Seal of the Court)

FOR OFFICE USE ONLY; Case Number: **7**

ED CV 13 - 00406 JGB SPX

AFTER COMPLETING PAGE 1 OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED ON PAGE 2.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**

**CIVIL COVER SHEET**

**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ NO ☐ YES

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or  
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or  
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

|                                  |   |
|----------------------------------|---|
| <b>County in this District:*</b> | California County outside of this District; State, if other than California; or Foreign Country |
| RIVERSIDE                        |   |

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

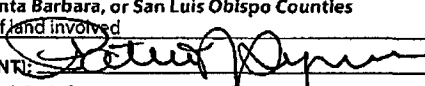
|                                  |   |
|----------------------------------|---|
| <b>County in this District:*</b> | California County outside of this District; State, if other than California; or Foreign Country |
|                                  | STATE OF RHODE ISLAND   |

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.  
**NOTE: In land condemnation cases, use the location of the tract of land involved.**

|                                  |   |
|----------------------------------|---|
| <b>County in this District:*</b> | California County outside of this District; State, if other than California; or Foreign Country |
| RIVERSIDE COUNTY                 |   |

\*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note:** In land condemnation cases, use the location of the tract of land involved

**X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):** 

DATE: 3-4-13

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

| Nature of Suit Code | Abbreviation | Substantive Statement of Cause of Action   |
|---------------------|--------------|--|
| 861                 | HIA          | All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b)) |
| 862                 | BL           | All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)  |
| 863                 | DIWC         | All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))  |
| 863                 | DIWW         | All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))   |
| 864                 | SSID         | All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.  |
| 865                 | RSI          | All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))   |



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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

LILIANA CARDENAS, On Behalf of  
Herself and All Other Similarly Situated  
California Residents,

Plaintiff,

v.

NBTY, INC., a Delaware corporation and  
REXALL SUNDOWN, INC., a Florida  
corporation,

Defendants.

Case No.:

**CLASS ACTION**

1. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*;
2. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL

Pursuant Plaintiff Liliana Cardenas ("Plaintiff"), by and through her attorneys, brings this action on behalf of herself and all other similarly situated California residents

1 against Defendants NBTY, Inc. and Rexall Sundown, Inc. (collectively “Defendants”),  
2 and alleges as follows:

3 **NATURE OF ACTION**

4 1. Forty-six million Americans suffer from arthritis. Osteoarthritis, also  
5 called degenerative joint tissue disease, is the most prevalent and disabling form of  
6 arthritis. Osteoarthritis is caused by the breakdown of cartilage, which is the connective  
7 tissue that cushions the ends of bones within the joint. Osteoarthritis is characterized by  
8 pain, joint damage, and limited motion (hereafter referred to as the “three major  
9 symptoms of arthritis”). The disease generally occurs late in life, and most commonly  
10 affects the hands and large weight bearing joints, such as the knees, hips and back. There  
11 is no cure for the three major symptoms of arthritis. Yet, Defendants promise a cure for  
12 each of the three major symptoms of arthritis in the form of a pill which they manufacture,  
13 market, and sell as the Osteo Bi-Flex line of joint health dietary supplements.<sup>1</sup>

14 2. It has been the accepted standard for over four decades in both the medical  
15 and scientific community, that in order for someone to make a health benefit claim about a  
16 product, the party making that claim must possess competent scientific  
17 evidence—meaning that they have at least two adequate and well controlled clinical trials  
18 supporting a particular health benefit claim about a particular product (hereafter referred  
19 to as “competent scientific evidence”).

20 3. On each and every Osteo Bi-Flex product label and/or package, Defendants  
21 prominently state that Osteo Bi-Flex will “promote mobility”, “renew cartilage”,  
22 “maintain healthy connective tissue” and “improve joint comfort.”

23 4. In making these affirmative representations, Defendants represent to each  
24 purchaser of Osteo Bi-Flex that they have competent scientific evidence that these

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25 <sup>1</sup> The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-  
26 Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex  
27 Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, “Osteo Bi-Flex”  
28 or “the Products”).



1 Products are effective in relieving and reducing the three major symptoms of arthritis and  
2 other joint related ailments.

3 5. Yet, Defendants do not possess such competent scientific evidence. In fact,  
4 the Osteo Bi-Flex products are not effective arthritis remedies. In short, Defendants have  
5 not obtained the necessary scientific proof with regard to each of the Osteo Bi-Flex  
6 products they market and sell in order to make the representations that they have made  
7 about each of these Products.

8 6. As a result, Defendants are guilty of deceptive conduct in their marketing  
9 and sales of the Osteo Bi-Flex products.

10 7. Defendants are also guilty of deception by omission in that, after  
11 affirmatively asserting that these Products are effective remedies against the three major  
12 symptoms of arthritis, Defendants had a duty to tell Plaintiff and the Class members that  
13 they did not have competent scientific evidence to support the efficacy representations  
14 that they make about the Osteo Bi-Flex products.

15 8. By making representations on the box of each Osteo Bi-Flex product that it  
16 was an arthritis remedy, Defendants represented (and continue to represent) to Plaintiff  
17 and the Class members that they had competent scientific evidence to back up these  
18 assertions when they did not possess such evidence. These were material  
19 misrepresentations concerning the only reason that Plaintiff and the Class members  
20 would have purchased Defendants' Osteo Bi-Flex products—that they were proven by  
21 competent scientific evidence to be effective against the three major symptoms of  
22 arthritis.

23 9. Other than to use the Osteo Bi-Flex products to relieve these symptoms of  
24 arthritis, there is no reason for Plaintiff or the Class members to have purchased these  
25 Products. Plaintiff and the Class members would not have purchased an Osteo Bi-Flex  
26 product without believing that it was a proven effective arthritis remedy and that it  
27 provided relief from the three major symptoms of arthritis.  
28

1           10.     Thus, through the act of purchasing one of Defendants' Osteo Bi-Flex  
2 products, Plaintiff and each Class member necessarily was deceived by Defendants'  
3 representations that these Products were effective arthritis remedies and would provide  
4 relief from the three major symptoms of arthritis.

5           11.     Plaintiff and the Class members were also deceived by Defendants in that,  
6 after affirmatively asserting that these Products would provide relief from the three major  
7 symptoms of arthritis, Defendants committed deception by omission in that they failed to  
8 inform Plaintiff and the Class members that they did not possess competent scientific  
9 evidence to support these health benefit claims.

10           12.     Every purchase of the Osteo Bi-Flex products was tainted with Defendants'  
11 deceptions in that just by looking at the package on the shelf or following the directions  
12 for use, Plaintiff and the Class members would have seen Defendants' deceptive  
13 representations.

14           13.     Defendants' deceptive marketing and advertising, as well as the complete  
15 lack of any disclosure that no competent scientific evidence exists to substantiate the  
16 claim that Osteo Bi-Flex will "promote mobility", "renew cartilage", "maintain healthy  
17 connective tissue", and "improve[] joint comfort", is designed to cause consumers to buy  
18 Osteo Bi-Flex. Defendants' deceptive marketing and advertising campaign has  
19 succeeded. Estimated sales of dietary supplements for osteoarthritis, including Osteo Bi-  
20 Flex, approached \$820 million in 2006.<sup>2</sup>

21           14.     Plaintiff brings this action on behalf of herself and other similarly situated  
22 California consumers who have purchased the Products to halt the dissemination of this  
23 false and misleading advertising message, correct the false and misleading perception it  
24 has created in the minds of consumers, and obtain redress for those who have purchased  
25 Osteo Bi-Flex products. Plaintiff alleges violations of the Consumers Legal Remedies  
26

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27 <sup>2</sup> 2007 Nutrition Industry Overview, Nutrition Business J., *available at* <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last visited Apr. 4, 2011).  
28

1 Act, the Unfair Competition Law, and Breach of Express Warranty created by  
2 Defendants' advertising, including false labeling.

3 **JURISDICTION AND VENUE**

4 15. The Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The  
5 matter in controversy, exclusive of interest and costs, exceeds the sum or value of  
6 \$5,000,000 and is a class action in which members of the class are citizens of a state  
7 different from Defendants.

8 16. The Court has personal jurisdiction over Defendants because Defendants  
9 are authorized to do and conduct business in California. Defendants have marketed,  
10 promoted, distributed, and sold the Osteo Bi-Flex products in California, and Defendants  
11 have sufficient minimum contacts with the State and/or sufficiently avail themselves of  
12 the markets in this State through their promotion, sales, and marketing within this State  
13 to render the exercise of jurisdiction by the Court permissible.

14 17. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)  
15 because a substantial part of the events or omissions giving rise to Plaintiff's claims  
16 occurred while she resided in the judicial district. Venue is also proper under 18 U.S.C.  
17 §1965(a) because Defendants transact substantial business in this District.

18 **PARTIES**

19 18. Plaintiff Liliana Cardenas resides in Roseville, California. During the  
20 Class Period, Plaintiff Cardenas was exposed to and saw Defendants' claims by reading  
21 the Osteo Bi-Flex label, purchased the Osteo Bi-Flex products in reliance on those  
22 claims, and suffered injury in fact and lost money. Had Plaintiff Cardenas known the  
23 truth about Defendants' misrepresentations and omissions, Plaintiff would not have  
24 purchased and used the Osteo Bi-Flex products.

25 19. Defendant NBTY Inc. ("NBTY") is a corporation organized and existing  
26 under the laws of the state of Delaware. Defendant NBTY's headquarters is at 2100  
27 Smithtown Ave., Ronkonkoma, New York 11779.





25. Since the Products' launch, Defendants have consistently conveyed the message to consumers throughout California that Osteo Bi-Flex will "promote mobility", "renew cartilage", "maintain healthy connective tissue" and "improve[] joint comfort" simply by taking the recommended number of tablets each day. These claims are not substantiated by competent scientific evidence and are factually baseless.

26. The primary active ingredients in all the Osteo Bi-Flex products are glucosamine hydrochloride and chondroitin sulfate. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. Chondroitin sulfate is a complex carbohydrate found in the body's connective tissues. There is no competent scientific evidence that taking any of these ingredients—let alone through oral administration—results in the body metabolizing it into something that relieves the three symptoms of arthritis.

27. All of the Osteo Bi-Flex products also contain lesser amounts of other

1 ingredients including hyaluronic acid, a component of synovial fluid found in the fluids  
2 of the eyes and joints; methylsulfonylmethane (“MSM”), an organic sulfur compound  
3 found in fruits, corn, tomatoes, tea, coffee, and milk; vitamin D; and Defendants’ 5-  
4 loxin advanced formula, a combination of MSM, chondroitin sulfate, vitamin C, hyaluronic  
5 acid, manganese collagen, and *boswellia serrata* (resin). There is no competent scientific  
6 evidence that taking any of these ingredients—let alone through oral  
7 administration—results in the body metabolizing it into something that relieves the three  
8 major symptoms of arthritis.

9 28. Contrary to the stated representations on all the Products’ labeling and  
10 packaging, Defendants do not possess (and have not possessed) competent scientific  
11 evidence that any of these ingredients, taken alone or in combination, are effective in  
12 treating the three major symptoms of arthritis or any other joint related ailments.

13 29. Despite inadequate testing and no scientifically valid confirmation that  
14 Osteo Bi-Flex is an effective joint treatment—let alone an effective treatment for *all*  
15 joints in the human body, for customers of *all* ages and for *all* stages of joint disease—  
16 Defendants state on the Products’ packaging and labeling that Osteo Bi-Flex will, *inter*  
17 *alia*: “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” and  
18 “improve[] joint comfort”. Front, back, and side shots of a representative Osteo Bi-Flex  
19 product label appear as follows:  
20  
21  
22  
23  
24  
25

26 ...

27 ...



Copies of all Osteo Bi-Flex product labels are attached hereto as Exhibit A.

### *The Impact Of Defendants' Wrongful Conduct*

30. Despite the lack of competent scientific evidence, Defendants continue to unequivocally claim that Osteo Bi-Flex provides joint health benefits to all persons.

31. As the manufacturer and distributor of Osteo Bi-Flex, Defendants possess specialized knowledge regarding the content and effects of the ingredients contained in their Products and are in a superior position to learn of the effects—and have learned of the effects—their Products have on consumers.

32. Specifically, Defendants knew or should have known, but failed to disclose that they have no competent scientific evidence that their Osteo Bi-Flex products are effective in treating the three major symptoms of arthritis or other joint related ailments.

33. Notwithstanding these deceptive representations and material omissions, Defendants conveyed and continue to convey one uniform message: Osteo Bi-Flex is

1 effective in treating the three major symptoms of arthritis.

2 34. Plaintiff and Class members have been and will continue to be deceived or  
3 misled by Defendants' deceptive representations touting the effectiveness of the Osteo  
4 Bi-Flex products. Plaintiff purchased and used the Osteo Bi-Flex products during the  
5 Class period and in doing so, read, considered and based her decisions to buy the  
6 Products on the above cited label representations. Because the Products' sole purpose is  
7 to provide joint relief for the three major symptoms of arthritis, Defendants'  
8 representations and omissions were a material factor in influencing Plaintiff's decision to  
9 purchase and use the Osteo Bi-Flex products. There is no other reason for Plaintiff to  
10 have purchased the Osteo Bi-Flex products and Plaintiff would not have purchased the  
11 Products had she known that Defendants did not possess competent scientific evidence to  
12 support the claims that they made about these Products.

13 35. As a result, Plaintiff and the Class members have been damaged in their  
14 purchases of these Products and have been deceived into purchasing Products that they  
15 believed, based on Defendants' representations, were proven to be effective in treating  
16 the three major symptoms of arthritis and other joint related ailments when, in fact, they  
17 are not.

18 36. Defendants, by contrast, reaped enormous profits from their false  
19 marketing and sale of these Products.

### 20 **CLASS ALLEGATIONS**

21 37. Plaintiff brings this action on behalf of herself and all other similarly  
22 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal  
23 Rules of Civil Procedure and seeks certification of the following Class:

24 All California residents who, within the applicable statute of  
25 limitations, purchased the Osteo Bi-Flex products<sup>3</sup>.

26 <sup>3</sup>The Osteo Bi-Flex products include: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo  
27 Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-  
28 Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced.



1 Excluded from the Class are Defendants, their parents,  
2 subsidiaries, affiliates, officers and directors, and those who  
purchased the Osteo Bi-Flex products for the purpose of resale.

3 38. Members of the Class are so numerous and geographically dispersed that  
4 joinder of all Class members is impracticable. Plaintiff is informed and believes, and on  
5 that basis alleges, that the proposed Class contains many thousands of members. The  
6 precise number of Class members is unknown to Plaintiff.

7 39. Common questions of law and fact exist as to all members of the Class and  
8 predominate over questions affecting only individual Class members. The common legal  
9 and factual questions include, but are not limited to, the following:

- 10 • Whether Defendants have competent scientific evidence to support  
11 each of the claims that they made about their Products;
- 12 • Whether the claims discussed herein that Defendants made about  
13 their Products were or are misleading, or reasonably likely to deceive;
- 14 • Whether Defendants' alleged conduct violates public policy;
- 15 • Whether the alleged conduct constitutes violations of the laws  
16 asserted herein;
- 17 • Whether Defendants engaged in false and misleading advertising;
- 18 • Whether Plaintiff and Class members have sustained monetary loss  
19 and the proper measure of that loss;
- 20 • Whether Plaintiff and Class members are entitled to restitution,  
21 disgorgement of Defendants' profits, declaratory and/or injunctive relief; and
- 22 • Whether Plaintiff and Class members are entitled to an award of  
23 compensatory damages.

24 40. The claims asserted by Plaintiff in this action are typical of the claims of the  
25 members of the Class, as the claims arise from the same course of conduct by  
26 Defendants, and the relief sought is common. Plaintiff and Class members suffered  
27 uniform damages caused by their purchase of the Osteo Bi-Flex products manufactured,  
28

1 marketed, and sold by Defendants.

2 41. Plaintiff will fairly and adequately represent and protect the interests of the  
3 members of the Class. Plaintiff has retained counsel competent and experienced in both  
4 consumer protection and class litigation.

5 42. A class action is superior to other available methods for the fair and  
6 efficient adjudication of this controversy. The expense and burden of individual  
7 litigation would make it impracticable or impossible for proposed Class members to  
8 prosecute their claims individually. It would thus be virtually impossible for the Class,  
9 on an individual basis, to obtain effective redress for the wrongs done to them.  
10 Furthermore, even if Class members could afford such individualized litigation, the court  
11 system could not. Individualized litigation would create the danger of inconsistent or  
12 contradictory judgments arising from the same set of facts. Individualized litigation  
13 would also increase the delay and expense to all parties and the court system from the  
14 issues raised by this action. By contrast, the class action device provides the benefits of  
15 adjudication of these issues in a single proceeding, economies of scale, and  
16 comprehensive supervision by a single court, and presents no unusual management  
17 difficulties under the circumstances here.

18 43. In the alternative, the Class also may be certified because Defendants have  
19 acted or refused to act on grounds generally applicable to the Class thereby making  
20 appropriate final declaratory and/or injunctive relief with respect to the members of the  
21 Class as a whole.

22 44. Plaintiff seeks preliminary and permanent injunctive and equitable relief on  
23 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin  
24 and prevent Defendants from engaging in the acts described, and requiring Defendants to  
25 provide full restitution to Plaintiff and Class members.

26 45. Unless a Class is certified, Defendants will retain monies received as a  
27 result of their conduct that were taken from Plaintiff and Class members. Unless a Class-

28

1 wide injunction is issued, Defendants will continue to commit the violations alleged, and  
2 the members of the Class and the general public will continue to be misled.

3 **COUNT I**  
4 **Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.***

5 46. Plaintiff re-alleges and incorporates by reference the allegations contained  
6 in the paragraphs above as if fully set forth herein.

7 47. This cause of action is brought under the Consumers Legal Remedies Act,  
8 California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a consumer as defined by  
9 California Civil Code §1761(d). Defendants’ Osteo Bi-Flex products are goods within  
10 the meaning of the Act.

11 48. Defendants violated and continue to violate the Act by engaging in the  
12 following practices proscribed by California Civil Code §1770(a) in transactions with  
13 Plaintiff and the Class which were intended to result in, and did result in, the sale of  
14 Defendants’ Osteo Bi-Flex products:

15 (5) Representing that [the Osteo Bi-Flex products have] . . . characteristics, . . .  
16 uses [or] benefits . . . which [they] do not have.

17 \* \* \*

18 (7) Representing that [the Osteo Bi-Flex products are] of a particular standard,  
19 quality or grade, . . . if [they are] of another.

20 \* \* \*

21 (9) Advertising goods . . . with the intent not to sell them as advertised.

22 \* \* \*

23 (16) Representing that [the Osteo Bi-Flex products have] been supplied in  
24 accordance with a previous representation when [they have] not.

25 49. Defendants violated and continue to violate the Act by representing the  
26 Osteo Bi-Flex products, *inter alia*, increase mobility, rebuild cartilage, maintain joint  
27 tissue and improve joint comfort when Defendants knew that the representations were  
28

1 unsubstantiated, false and misleading.

2 50. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order  
3 enjoining the above-described wrongful acts and practices of Defendants and for  
4 restitution and disgorgement.

5 51. Pursuant to §1782 of the Act, Plaintiff notified Defendants in writing by  
6 certified mail of the particular violations of §1770 of the Act and demanded that  
7 Defendants rectify the problems associated with the actions detailed above and give  
8 notice to all affected consumers of Defendants' intent to so act. Copies of the letters are  
9 attached hereto as Exhibit B.

10 52. If Defendants fail to rectify or agree to rectify the problems associated with  
11 the actions detailed above and give notice to all affected consumers within 30 days of the  
12 date of written notice pursuant to §1782 of the Act, Plaintiff will amend this complaint to  
13 add claims for actual, punitive and statutory damages, as appropriate.

14 53. Defendants' conduct is malicious, fraudulent and wanton, and provides  
15 misleading information.

16 54. Pursuant to §1780(d) of the Act, attached hereto as Exhibit C is the  
17 affidavit showing that this action has been commenced in the proper forum.

18 **COUNT II**  
19 **Violation of Business & Professions Code §17200, *et seq.***

20 55. Plaintiff re-alleges and incorporates by reference the allegations contained  
21 in the paragraphs above as if fully set forth herein.

22 56. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
23 property as a result of Defendants' conduct because she purchased the Osteo Bi-Flex  
24 products.

25 57. In the course of conducting business, Defendants committed unlawful  
26 business practices by, *inter alia*, making the representations (which also constitute  
27 advertising within the meaning of §17200) and omissions of material facts, as set forth  
28

1 more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business &  
2 Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

3 58. Plaintiff and the Class reserve the right to allege other violations of law,  
4 which constitute other unlawful business acts or practices. Such conduct is ongoing and  
5 continues to this date.

6 59. Defendants' acts, omissions, misrepresentations, practices and non-  
7 disclosures as alleged herein also constitute "unfair" business acts and practices within  
8 the meaning of Business and Professions Code §17200 *et seq.*, in that their conduct is  
9 substantially injurious to consumers, offends public policy, and is immoral, unethical,  
10 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged  
11 benefits attributable to such conduct.

12 60. As stated in this complaint, Plaintiff alleges violations of consumer  
13 protection, unfair competition and truth in advertising laws resulting in harm to  
14 consumers. Plaintiff asserts violations of the public policy of engaging in false and  
15 misleading advertising, unfair competition and deceptive conduct towards consumers.  
16 This conduct constitutes violations of the unfair prong of Business & Professions Code  
17 §17200 *et seq.*

18 61. There were reasonably available alternatives to further Defendants'  
19 legitimate business interests, other than the conduct described herein.

20 62. Defendants' claims, nondisclosures and misleading statements, as more  
21 fully set forth above, are also false, misleading and/or likely to deceive the consuming  
22 public within the meaning of Business & Professions Code §17200 *et seq.*

23 63. Defendants' labeling and packaging as described herein, also constitute  
24 unfair, deceptive, untrue and misleading advertising.

25 64. Defendants' conduct caused and continues to cause substantial injury to  
26 Plaintiff and the other Class members. Plaintiff has suffered injury in fact and has lost  
27 money as a result of Defendants' unfair conduct.  
28

### **COUNT III**

#### **Breach of Express Warranty**

- 1 A. Certifying the class as requested herein;  
2 B. Awarding Plaintiff and the proposed Class members damages;  
3 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff  
4 and the proposed Class members;  
5 D. Awarding declaratory and injunctive relief as permitted by law or equity,  
6 including enjoining Defendants from continuing the unlawful practices as  
7 set forth herein, and directing Defendants to identify, with court  
8 supervision, victims of their conduct and pay them restitution and  
9 disgorgement of all monies acquired by Defendants by means of any act or  
10 practice declared by this Court to be wrongful;  
11 E. Ordering Defendants to engage in a corrective advertising campaign;  
12 F. Awarding attorneys' fees and costs; and  
13 G. Providing such further relief as may be just and proper.

14 **JURY DEMAND**

15 Plaintiff demands a trial by jury on all issues so triable.  
16

17 DATED: June 14, 2011

BONNETT FAIRBOURN FRIEDMAN  
& BALINT, PC

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Attorneys for Plaintiff

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JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Liliana Cardenas

(b) County of Residence of First Listed Plaintiff Placer  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Patricia N. Syverson, Bonnett, Fairbourn, Friedman & Balint, P.C.  
2901 N. Central Ave., Ste. 1000, Phoenix, AZ 85012

**DEFENDANTS**

NBTY, Inc.; Rexall Sundown, Inc.

County of Residence of First Listed Defendant Suffolk  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
|   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

| CONTRACT  | TORTS  |   | FORFEITURE/PENALTY   | BANKRUPTCY   | OTHER STATUTES  |
|---|--|---|--|--|---|
| <input type="checkbox"/> 110 Insurance  | <input type="checkbox"/> 310 Airplane                        | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice         | <input type="checkbox"/> 610 Agriculture                                 | <input type="checkbox"/> 422 Appeal 28 USC 158     | <input type="checkbox"/> 400 State Reapportionment                          |
| <input type="checkbox"/> 120 Marine   | <input type="checkbox"/> 315 Airplane Product Liability      | <input type="checkbox"/> 365 Personal Injury - Product Liability        | <input type="checkbox"/> 620 Other Food & Drug                           | <input type="checkbox"/> 423 Withdrawal 28 USC 157 | <input type="checkbox"/> 410 Antitrust                                      |
| <input type="checkbox"/> 130 Miller Act   | <input type="checkbox"/> 320 Assault, Libel & Slander        | <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability | <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 | <input type="checkbox"/> 424 Consumer Credit       | <input type="checkbox"/> 430 Banks and Banking                              |
| <input type="checkbox"/> 140 Negotiable Instrument                                | <input type="checkbox"/> 330 Federal Employers' Liability    | <input type="checkbox"/> 370 Other Fraud                                | <input type="checkbox"/> 630 Liquor Laws                                 | <input type="checkbox"/> 425 Consumer Credit       | <input type="checkbox"/> 440 Commerce                                       |
| <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment    | <input type="checkbox"/> 340 Marine                          | <input type="checkbox"/> 371 Truth in Lending                           | <input type="checkbox"/> 640 R.R. & Truck                                | <input type="checkbox"/> 426 Consumer Credit       | <input type="checkbox"/> 450 Deportation                                    |
| <input type="checkbox"/> 151 Medicare Act   | <input type="checkbox"/> 345 Marine Product Liability        | <input type="checkbox"/> 380 Other Personal                             | <input type="checkbox"/> 650 Airline Regs.                               | <input type="checkbox"/> 427 Consumer Credit       | <input type="checkbox"/> 460 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) | <input type="checkbox"/> 350 Motor Vehicle                   | <input type="checkbox"/> 385 Property Damage Product Liability          | <input type="checkbox"/> 660 Occupational Safety/Health                  | <input type="checkbox"/> 428 Consumer Credit       | <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations |
| <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits        | <input type="checkbox"/> 355 Motor Vehicle Product Liability |   | <input type="checkbox"/> 690 Other                                       | <input type="checkbox"/> 429 Consumer Credit       | <input type="checkbox"/> 480 Consumer Credit                                |
| <input type="checkbox"/> 160 Stockholders' Suits                                  | <input type="checkbox"/> 360 Other Personal Injury           |   |  | <input type="checkbox"/> 430 Consumer Credit       | <input type="checkbox"/> 490 Cable/Sat TV                                   |
| <input type="checkbox"/> 190 Other Contract                                       |  |   |  | <input type="checkbox"/> 431 Consumer Credit       | <input type="checkbox"/> 510 Selective Service                              |
| <input type="checkbox"/> 195 Contract Product Liability                           |  |   |  | <input type="checkbox"/> 432 Consumer Credit       | <input type="checkbox"/> 520 Securities/Commodities/Exchange                |
| <input type="checkbox"/> 196 Franchise  |  |   |  | <input type="checkbox"/> 433 Consumer Credit       | <input type="checkbox"/> 530 Securities/Commodities/Exchange                |
|   |  |   |  | <input type="checkbox"/> 434 Consumer Credit       | <input type="checkbox"/> 540 Securities/Commodities/Exchange                |
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|   |  |   |  | <input type="checkbox"/> 436 Consumer Credit       | <input type="checkbox"/> 560 Securities/Commodities/Exchange                |
|   |  |   |  | <input type="checkbox"/> 437 Consumer Credit       | <input type="checkbox"/> 570 Securities/Commodities/Exchange                |
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|   |  |   |  | <input type="checkbox"/> 455 Consumer Credit       | <input type="checkbox"/> 750 Securities/Commodities/Exchange                |
|   |  |   |  | <input type="checkbox"/> 456 Consumer Credit       | <input type="checkbox"/> 760 Securities/Commodities/Exchange                |
|   |  |   |  | <input type="checkbox"/> 457 Consumer Credit       | <input type="checkbox"/> 770 Securities/Commodities/Exchange                |
|   |  |   |  | <input type="checkbox"/> 458 Consumer Credit       | <input type="checkbox"/> 780 Securities/Commodities/Exchange                |
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|   |  |   |  | <input type="checkbox"/> 460 Consumer Credit       | <input type="checkbox"/> 800 Securities/Commodities/Exchange                |
|   |  |   |  | <input type="checkbox"/> 461 Consumer Credit       | <input type="checkbox"/> 810 Securities/Commodities/Exchange                |
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|   |  |   |  | <input type="checkbox"/> 470 Consumer Credit       | <input type="checkbox"/> 900 Securities/Commodities/Exchange                |
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|   |  |   |  | <input type="checkbox"/> 476 Consumer Credit       | <input type="checkbox"/> 960 Securities/Commodities/Exchange                |
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|   |  |   |  | <input type="checkbox"/> 480 Consumer Credit       | <input type="checkbox"/> 1000 Securities/Commodities/Exchange               |

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332(d)(2)

Brief description of cause:  
Violation of Civil Code 1750, Business & Professional Code 17200, Breach of Express Warranty

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
5,000,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/14/2011

SIGNATURE OF ATTORNEY OF RECORD

s/ Patricia N. Syverson

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_





**Osteo Bi-Flex**

**Glucosamine HCl & Vitamin D3**

**5-LUXIN ADVANCED**

**THE NATURAL AGING PROCESS CAN ADD EXCESSIVE STRESS TO YOUR JOINTS. JOINTS DON'T PLUMP UP OVER TIME AT ANYTIME. NOW THERE'S A DIFFERENT CHOICE TO SUPPORT HEALTHY JOINTS.**

**The FIRST CHOICE in Premium Joint Care**

**Osteo Bi-Flex® ONE PER DAY** guarantees **MUCH** faster relief of joint discomfort than other over-the-counter products. **5-LUXIN ADVANCED™** shows improvement in joint comfort within 7 days.\*

**Osteo Bi-Flex® helps to:**

- Reverse "Aging" - Reverse Cartilage
- Maintain Healthy Connective Tissue
- Joint "Oil" - Excess Oil-Free ONE PER DAY capsule is all you need to help protect cartilage, revitalize connective tissue, and help ease occasional joint stress.



**Helps to:**

- Reverse "Aging"
- Maintain Healthy Connective Tissue
- Reverse Cartilage
- Maintain Healthy Connective Tissue

**ANTHONY'S PHARMACEUTICALS**

**5-LUXIN ADVANCED**

**Osteo Bi-Flex**

**Glucosamine HCl & Vitamin D3**

**5-LUXIN ADVANCED**

**SHOWS IMPROVEMENT IN Joint Comfort within 7 Days!\***

**30 DAY TRIAL**

**30 DAY TRIAL**

**5-LUXIN ADVANCED™** is a highly potent concentrated extract of the active ingredient AKBA from the herb Boswellia serrata. **5-LUXIN ADVANCED™** contains high concentrations of AKBA, which is an important Bioactive Acid for helping maintain joint health.

**Osteo Bi-Flex® ONE PER DAY** features high potency Vitamin D3 which promotes healthy bone and supports bone strength. By promoting bone health, Vitamin D3 acts synergistically with our joint nutrients as bones and joints work together to create comfortable movement. **Osteo Bi-Flex® ONE PER DAY** capsules with Vitamin D3 are a potent synergistic combination of highly effective ingredients in Joint Care Science.™

**Osteo Bi-Flex®** is manufactured under the highest standards for product quality, including purity and potency.

**Visit us at: [WWW.OSTEOBIFLEX.COM](http://WWW.OSTEOBIFLEX.COM)**

**or call toll free 1-888-91-HEALTH (342-6473)**

**See Return Policy for product going regarding our 30-day trial.**

**DIRECTIONS FOR ADULT USE. TAKE ONE (1) CAPSULE PER DAY WITH FOOD.** As a reminder, discuss the supplement and medications you take with your health care providers.

**Supplement Facts**

| Serving Size 1 Capsule           |               |
|----------------------------------|---------------|
| Amount Per Serving               | % Daily Value |
| Vitamin D3 (as Cholecalciferol)  | 400 IU 80%    |
| Glucosamine HCl                  | 1300 mg 3.5%  |
| 5-LUXIN ADVANCED™ AKBA           | 100 mg **     |
| Boswellia serrata Extract (AKBA) |               |

\*Based on 100% natural AKBA extract.

**Other ingredients:** Cellulose (plant origin), Croscarmellose, Croscarmellose + 2% of: Cellulose Gelling, Polyethylene Glycol, Croscarmellose, Vegetable Magnesium Stearate.

**Contains Vitamin D3, Vitamin E, Vitamin K, Vitamin B12, Vitamin C, Vitamin B6, Vitamin A, Vitamin B1, Vitamin B2, Vitamin B3, Vitamin B5, Vitamin B7, Vitamin B9, Vitamin B10, Vitamin B11, Vitamin B12, Vitamin B13, Vitamin B14, Vitamin B15, Vitamin B16, Vitamin B17, Vitamin B18, Vitamin B19, Vitamin B20, Vitamin B21, Vitamin B22, Vitamin B23, Vitamin B24, Vitamin B25, Vitamin B26, Vitamin B27, Vitamin B28, Vitamin B29, Vitamin B30, Vitamin B31, Vitamin B32, Vitamin B33, Vitamin B34, Vitamin B35, Vitamin B36, Vitamin B37, Vitamin B38, Vitamin B39, Vitamin B40, Vitamin B41, Vitamin B42, Vitamin B43, Vitamin B44, Vitamin B45, Vitamin B46, Vitamin B47, Vitamin B48, Vitamin B49, Vitamin B50, Vitamin B51, Vitamin B52, Vitamin B53, Vitamin B54, Vitamin B55, Vitamin B56, Vitamin B57, Vitamin B58, Vitamin B59, Vitamin B60, Vitamin B61, Vitamin B62, Vitamin B63, Vitamin B64, Vitamin B65, Vitamin B66, Vitamin B67, Vitamin B68, Vitamin B69, Vitamin B70, Vitamin B71, Vitamin B72, Vitamin B73, Vitamin B74, Vitamin B75, Vitamin B76, Vitamin B77, Vitamin B78, Vitamin B79, Vitamin B80, Vitamin B81, Vitamin B82, Vitamin B83, Vitamin B84, Vitamin B85, Vitamin B86, Vitamin B87, Vitamin B88, Vitamin B89, Vitamin B90, Vitamin B91, Vitamin B92, Vitamin B93, Vitamin B94, Vitamin B95, Vitamin B96, Vitamin B97, Vitamin B98, Vitamin B99, Vitamin B100.**

[illegible][illegible]

[illegible][illegible]

**DOCTOR & PHARMACIST RECOMMENDED BRAND**

**Osteo Bi-Flex**

**What Can Osteo Bi-Flex® Do For You?**

As we age, the body is less able to maintain the supportive cartilage at joints surrounding joints and bones. Osteoarthritis is a major building block of joint cartilage, which helps to maintain the structural integrity of joints and connective tissues. Chondroitin is a naturally occurring nutrient found in connective tissue that helps lubricate and cushion joints while supporting the renewal of cartilage.

**What Can I Expect?**

There are many factors that play a role in joint health, such as your weight, gender, and genetics. Individual results may vary, but when taken every day as directed, you should expect to see results in as little as 4 to 6 weeks.

- Promote Mobility
- Renew Cartilage
- Maintain Healthy Connective Tissue

**Osteo Bi-Flex**

**GLUCOSAMINE CHONDROITIN COMPLEX**

**REGULAR STRENGTH**

**Improves Mobility\***  
**Improves Joint Comfort\***  
**Supports Renewal of Cartilage\***

**120 CAPLETS**  
**DIETARY SUPPLEMENT**

**DOCTOR & PHARMACIST RECOMMENDED BRAND**

**Why Take Osteo Bi-Flex®? Many Reasons:**

- #1 Doctor Recommended Brand.
- Manufactured under the strictest standards for product purity and potency.
- Made exclusively with naturally-sourced Glucosamine and Chondroitin, at the amounts relied on by researchers.

Osteo Bi-Flex® is manufactured under the highest standards for product quality, including purity and potency.

Visit us in [WWW.OSTEOBIFLEX.COM](http://WWW.OSTEOBIFLEX.COM) or call toll free 1-800-VITALITY-6666-7634

See Bottom Panel for product points regarding our Ambassadors Club®

**KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TEMPERATURES ABOVE 100°F MAY CAUSE THE PRODUCT TO BECOME MOIST.**

**CAUTION:** If you are pregnant, nursing, or taking any medications, consult your doctor before use. Do not use if you are allergic to any of the ingredients listed on the label. Do not use if the seal is broken or missing.

**MANUFACTURED BY: DICKEL, SUNDOWN, INC., BOCA RATON, FL 33487 USA**

Effect on the body of the product is not intended to be used for medical purposes. The product is not intended to be used for medical purposes. The product is not intended to be used for medical purposes. The product is not intended to be used for medical purposes.

**DOCTOR & PHARMACIST RECOMMENDED BRAND**

**Osteo Bi-Flex**

**THE NATURAL AGING PROCESS CAN ADD EXCESSIVE STRESS TO YOUR JOINTS. ANTI-INFLAMMATORY FLAVONOIDS CAN ACTIVATE AN "AGE" SIGNAL, NOW THERE'S AN INDEPENDENT CHOICE TO HELP SLOW AGING JOINTS.**

**The FIRST CHOICE in Premium Joint Care®**

Osteo Bi-Flex® MSM with Hyaluronic Acid is a revolutionary formula that contains Glucosamine, Chondroitin, MSM and Hyaluronic Acid as well as the unique Interfacial patent pending ingredient E-LOXIN Advanced™. Glucosamine and the Joint Shield™ Proprietary Blend form a dynamic combo to help:

- Promote Mobility
- Renew Cartilage
- Maintain Healthy Connective Tissue

Osteo Bi-Flex® MSM with Hyaluronic Acid helps protect cartilage and helps with arthritic flare-ups while helping to renew the cellular components within joints.

- Promote Mobility
- Renew Cartilage
- Maintain Healthy Connective Tissue

**Osteo Bi-Flex**

**MSM with Hyaluronic Acid**

**Helps Build Cartilage and Lubricate Joints!\***

**120 CAPLETS**  
**DIETARY SUPPLEMENT**

**DOCTOR & PHARMACIST RECOMMENDED BRAND**

**The Only Leading Brand With Joint Shield™, featuring E-LOXIN Advanced™**

E-LOXIN Advanced™ is a highly potent concentrated extract of the active ingredient AKBA from the herb Boswellia serrata.

Osteo Bi-Flex® MSM with Hyaluronic Acid is a potent synergistic combination of highly effective ingredients in "Joint Care Science" and the only leading brand containing Joint Shield™.

Osteo Bi-Flex® is manufactured under the highest standards for product quality, including purity and potency.

Visit us at: [WWW.OSTEOBIFLEX.COM](http://WWW.OSTEOBIFLEX.COM) or call toll free 1-800-VITALITY-6666-7634

See Bottom Panel for product points regarding our Ambassadors Club®

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**DOCTOR & PHARMACIST RECOMMENDED BRAND**

**Osteo Bi-Flex**

**DIRECTIONS FOR ADULT USE: TAKE SIX (6) CAPLETS PER DAY WITH FOOD.** As a reminder, discuss the supplements and medications you take with your health care providers. For best results, take the full dosage of Osteo Bi-Flex® daily. Allow 4-6 weeks before you begin to feel results.

**Note:** You have the option of taking all six caplets together or spread throughout the day.

**Supplement Facts**

| Serving Size: 6 Caplets |                  | Daily Value |               |
|-------------------------|------------------|-------------|---------------|
| Amount Per Serving      |                  |             | % Daily Value |
| Chondroitin             | 100 mg           |             | 4%            |
| Glucosamine HCl         | 1,800 mg (1.8 g) |             | 36%           |
| Chondroitin Sulfate     | 1,200 mg (1.2 g) |             | 24%           |

\*Percent Daily Values are based on a diet of other people's secrets.

**Other Ingredients:** Cellulose (Plant Origin), Red Beet Juice Color, Croscollon, Vegetable Magnesium Stearate, SECA.

**Contains shellfish (shrimp, crab, lobster, crayfish) ingredients.**

**Osteo Bi-Flex**

**MSM with Hyaluronic Acid**

**Helps Build Cartilage and Lubricate Joints!\***

**120 CAPLETS**  
**DIETARY SUPPLEMENT**

**DOCTOR & PHARMACIST RECOMMENDED BRAND**

**The Only Leading Brand With Joint Shield™, featuring E-LOXIN Advanced™**

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Osteo Bi-Flex® MSM with Hyaluronic Acid is a potent synergistic combination of highly effective ingredients in "Joint Care Science" and the only leading brand containing Joint Shield™.

Osteo Bi-Flex® is manufactured under the highest standards for product quality, including purity and potency.

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See Bottom Panel for product points regarding our Ambassadors Club®

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**DOCTOR & PHARMACIST RECOMMENDED BRAND**

**Osteo Bi-Flex**

**DIRECTIONS FOR ADULT USE: TAKE FOUR (4) CAPLETS PER DAY WITH FOOD.** As a reminder, discuss the supplements and medications you take with your health care providers. Note the dose the option of taking four caplets together or spread throughout the day.

**Supplement Facts**

| Serving Size: 4 Caplets         |                 | Daily Value |               |
|---------------------------------|-----------------|-------------|---------------|
| Amount Per Serving              |                 |             | % Daily Value |
| Glucosamine HCl                 | 1,200 mg        |             | 24%           |
| Chondroitin Sulfate             | 800 mg          |             | 16%           |
| MSM                             | 60 mg           |             | 2%            |
| Hyaluronic Acid                 | 150 mg (0.15 g) |             | 3%            |
| Joint Shield™ Proprietary Blend | 330 mg          |             | 66%           |
| Joint Shield™ Proprietary Blend | 330 mg          |             | 66%           |

\*Percent Daily Values are based on a diet of other people's secrets.

**Other Ingredients:** Cellulose (Plant Origin), Croscollon, Contains 2% of Croscollon Color, Vegetable Magnesium Stearate, SECA.

**Contains shellfish (shrimp, crab, lobster, crayfish) ingredients.**

**Osteo Bi-Flex**

**MSM with Hyaluronic Acid**

**Helps Build Cartilage and Lubricate Joints!\***

**120 CAPLETS**  
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Osteo Bi-Flex® MSM with Hyaluronic Acid is a potent synergistic combination of highly effective ingredients in "Joint Care Science" and the only leading brand containing Joint Shield™.

Osteo Bi-Flex® is manufactured under the highest standards for product quality, including purity and potency.

Visit us at: [WWW.OSTEOBIFLEX.COM](http://WWW.OSTEOBIFLEX.COM) or call toll free 1-800-VITALITY-6666-7634

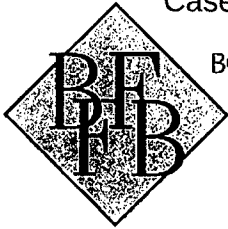
See Bottom Panel for product points regarding our Ambassadors Club®

**KEEP OUT OF REACH OF CHILDREN. STORE IN A DRY PLACE AND AVOID EXCESSIVE HEAT. TEMPERATURES ABOVE 100°F MAY CAUSE THE PRODUCT TO BECOME MOIST.**

**CAUTION:** If you are pregnant, nursing, or taking any medications, consult your doctor before use. Do not use if you are allergic to any of the ingredients listed on the label. Do not use if the seal is broken or missing.

**MANUFACTURED BY: DICKEL, SUNDOWN, INC., BOCA RATON, FL 33487 USA**

Effect on the body of the product is not intended to be used for medical purposes. The product is not intended to be used for medical purposes. The product is not intended to be used for medical purposes. The product is not intended to be used for medical purposes.



BONNETT, FAIRBOURN,  
FRIEDMAN & BALINT, PC

JERRY C. BONNETT  
FRANCIS J. BALINT, JR.  
C. KEVIN DYKSTRA  
ANDREW Q. EVERROAD  
JONATHAN S. WALLACK  
CHRISTINA L. BANNON  
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KIMBERLY C. PAGE  
TODD D. CARPENTER<sup>1</sup>  
T. BRENT JORDAN<sup>3</sup>  
LINDSEY M. GOMEZ

MICHAEL N. WIDENER, Of Counsel

<sup>1</sup>Admitted Only in California  
<sup>2</sup>Admitted Only in California, Missouri  
and Kansas  
<sup>3</sup>Admitted Only in Pennsylvania

June 14, 2011

**VIA CERTIFIED MAIL (RETURN RECEIPT)**  
**(RECEIPT NO. 7009-0080-0000-4200-3898)**

Irene Fisher, Esq.  
General Counsel  
NBTY, Inc.  
2100 Smithtown Avenue  
Ronkonkoma, NY 11779

Re: Cardenas v. NBTY, Inc., *et al.*

Dear Ms. Fisher:

Our law firm represents Lilian Cardenas and all other similarly situated California Residents in an action against NBTY, Inc. ("NBTY") and Rexall Sundown, Inc. ("Rexall") (collectively, "Defendants") arising out of, *inter alia*, misrepresentations, either express or implied, by Defendants to consumers that the Osteo Bi-Flex line of joint dietary supplements<sup>1</sup> are effective treatments for arthritis and other joint related ailments.

Ms. Cardenas and other similarly situated California residents purchased the Osteo Bi-Flex products unaware that Defendants' representations found on the Products' labels and packages were not substantiated by competent scientific evidence, including, among others, that Osteo Bi-Flex will increase mobility, renew cartilage, and maintain healthy connective tissue. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

These representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to result in the sale of Osteo Bi-Flex to the consuming public. In fact, these representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*,

<sup>1</sup> The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, "Osteo Bi-Flex" or "the Products").

the following subdivisions:

- (5) Representing that [Osteo Bi-Flex has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

\* \* \*

- (7) Representing that [Osteo Bi-Flex is] of a particular standard, quality or grade, . . . if [it is] of another.

\* \* \*

- (9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

- (16) Representing that [Osteo Bi-Flex has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Defendants' claims also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

While the Complaint constitutes sufficient notice of the claims asserted, pursuant to California Civil Code §1782, we hereby demand on behalf of our client and all other similarly situated California residents that Defendants immediately correct and rectify this violation of California Civil Code §1770 by ceasing the misleading marketing campaign and ceasing dissemination of false and misleading information as described in the enclosed Complaint. In addition, Defendants should offer to refund the purchase price to all consumer purchasers of these Products, plus reimbursement for interest, costs, and fees.

Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Defendants address this problem immediately.

Defendants must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject

Products who reside in California;

2. Notify all such purchasers so identified that upon their request, Defendants will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Osteo Bi-Flex purchasers who so request; and

4. Cease from expressly or impliedly representing to consumers that these Products are effective at treating arthritis related symptoms or any other joint ailments when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

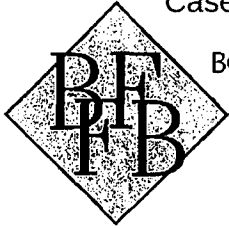
Very truly yours,

A handwritten signature in black ink, appearing to read 'Patricia N. Syverson', written in a cursive style.

Patricia N. Syverson  
For the Firm

PNS:lmg  
Enclosures





BONNETT, FAIRBOURN,  
FRIEDMAN & BALINT, PC

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FRANCIS J. BALINT, JR.  
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and Kansas  
<sup>3</sup>Admitted Only in Pennsylvania

June 14, 2011

**VIA CERTIFIED MAIL (RETURN RECEIPT)**  
**(RECEIPT NO. 7009-0080-0000-4081-5424)**

Rexall Sundown, Inc.,  
General Counsel  
2100 Smithtown Ave.,  
Ronkonkoma, New York 11779

Re: Cardenas v. NBTY, Inc., *et al.*

Dear Sir or Madam:

Our law firm represents Lilian Cardenas and all other similarly situated California Residents in an action against NBTY, Inc. ("NBTY") and Rexall Sundown, Inc. ("Rexall") (collectively, "Defendants") arising out of, *inter alia*, misrepresentations, either express or implied, by Defendants to consumers that the Osteo Bi-Flex line of joint dietary supplements<sup>1</sup> are effective treatments for arthritis and other joint related ailments.

Ms. Cardenas and other similarly situated California residents purchased the Osteo Bi-Flex products unaware that Defendants' representations found on the Products' labels and packages were not substantiated by competent scientific evidence, including, among others, that Osteo Bi-Flex will increase mobility, renew cartilage, and maintain healthy connective tissue. The full claims, including the facts and circumstances surrounding these claims, are detailed in the Class Action Complaint, a copy of which is enclosed and incorporated by this reference.

These representations are false and misleading and constitute unfair methods of competition and unlawful, unfair, and fraudulent acts or practices, undertaken by Defendants with the intent to result in the sale of Osteo Bi-Flex to the consuming public. In fact, these representations do not assist consumers; they simply mislead them.

This practice constitutes a violation of California Civil Code §1770(a) under, *inter alia*, the following subdivisions:

<sup>1</sup> The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, "Osteo Bi-Flex" or "the Products").

- (5) Representing that [Osteo Bi-Flex has] . . . characteristics, . . . uses [or] benefits. . . which [it does] not have.

\* \* \*

- (7) Representing that [Osteo Bi-Flex is] of a particular standard, quality or grade, . . . if [it is] of another.

\* \* \*

- (9) Advertising goods . . . with the intent not to sell them as advertised.

\* \* \*

- (16) Representing that [Osteo Bi-Flex has] been supplied in accordance with a previous representation when [it has] not.

California Civil Code §1770(a)(5)-(16).

Defendants' claims also constitute violations of California Business and Professions Code §17200, *et seq.*, and a breach of express warranties.

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Plaintiff will, after 30 days from the date of this letter, amend the Complaint without leave of Court, as permitted by California Civil Code §1782, to include claims for actual and punitive damages (as may be appropriate) if a full and adequate response to this letter is not received. These damage claims also would include claims under already asserted theories of unlawful business acts, as well as the claims under the Consumers Legal Remedies Act. Thus, to avoid further litigation, it is in the interest of all parties concerned that Defendants address this problem immediately.

Defendants must undertake all of the following actions to satisfy the requirements of California Civil Code §1782(c):

1. Identify or make a reasonable attempt to identify purchasers of the subject Products who reside in California;

2. Notify all such purchasers so identified that upon their request, Defendants will offer an appropriate remedy for its wrongful conduct, which can include a full refund of the purchase price paid for such products, plus interest, costs and fees;

3. Undertake (or promise to undertake within a reasonable time if it cannot be done immediately) the actions described above for all Osteo Bi-Flex purchasers who so request; and

4. Cease from expressly or impliedly representing to consumers that these Products are effective at treating arthritis related symptoms or any other joint ailments when there is no reasonable basis for so claiming, as more fully described in the attached Complaint.

We await your response.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patricia N. Syverson".

Patricia N. Syverson  
For the Firm

PNS:lmg  
Enclosures

Case 2:11-cv-01615-LKK -CKD Document 1-4 Filed 06/14/11 Page 1 of 3

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

LILIANA CARDENAS, On Behalf of  
Herself and All Other Similarly Situated  
California Residents,

Plaintiff,

v.

NBTY, INC., a Delaware corporation and  
REXALL SUNDOWN, INC., a Florida  
corporation,

Defendants.

Case No.:

CLASS ACTION

DECLARATION OF PATRICIA N.  
SYVERSON PURSUANT TO CALIFORNIA  
CIVIL CODE §1780(d)

//

1 I, Patricia N. Syverson, declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of the State of  
3 California. I am a shareholder of the law firm of Bonnett, Fairbourn, Friedman & Balint, P.C.,  
4 the counsel of record for plaintiff in the above-entitled action.

5 2. Defendants NBTY, Inc., and Rexall Sundown, Inc., have done and are doing  
6 business in the Eastern District of California. Such business includes the marketing,  
7 distributing and sale of their Osteo Bi-Flex line of joint dietary supplements. Furthermore,  
8 Plaintiff Trujillo purchased the Osteo Bi-Flex products in Roseville, California.  
9

10 I declare under penalty of perjury under the laws of the State of California that the  
11 foregoing is true and correct.

12 Executed this 14th day of June, 2011, at Phoenix, Arizona.

13  
14  
15 BONNETT, FAIRBOURN, FRIEDMAN  
16 & BALINT, P.C.  
17 ANDREW S. FRIEDMAN  
18 ELAINE A. RYAN  
19 PATRICIA N. SYVERSON (203111)

20 s/ Patricia N. Syverson  
21 Patricia N. Syverson

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Telephone: 312-427-3600

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

LILIANA CARDENAS, On Behalf of  
Herself and All Other Similarly Situated  
California Residents,

Plaintiff,

v.

NBTY, INC., a Delaware corporation and  
REXALL SUNDOWN, INC., a Florida  
corporation,

Defendants.

Case No.: 2:11-CV-01615-LKK-EFB

**CLASS ACTION**

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §1750 *et seq.*;
2. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §17200 *et seq.*; and
3. BREACH OF EXPRESS WARRANTY.

DEMAND FOR JURY TRIAL



1 Pursuant Plaintiff Liliana Cardenas ("Plaintiff"), by and through her attorneys,  
2 brings this action on behalf of herself and all other similarly situated California residents  
3 against Defendants NBTY, Inc. and Rexall Sundown, Inc. (collectively "Defendants"),  
4 and alleges as follows:

### 5 NATURE OF ACTION

6 1. Forty-six million Americans suffer from arthritis. Osteoarthritis, also  
7 called degenerative joint tissue disease, is the most prevalent and disabling form of  
8 arthritis. Osteoarthritis is caused by the breakdown of cartilage, which is the connective  
9 tissue that cushions the ends of bones within the joint. Osteoarthritis is characterized by  
10 pain, joint damage, and limited motion (hereafter referred to as the "three major  
11 symptoms of arthritis"). The disease generally occurs late in life, and most commonly  
12 affects the hands and large weight bearing joints, such as the knees, hips and back. There  
13 is no cure for the three major symptoms of arthritis. Yet, Defendants promise a cure for  
14 each of the three major symptoms of arthritis in the form of a pill which they manufacture,  
15 market, and sell as the Osteo Bi-Flex line of joint health dietary supplements.<sup>1</sup>

16 2. It has been the accepted standard for over four decades in both the medical  
17 and scientific community, that in order for someone to make a health benefit claim about a  
18 product, the party making that claim must possess competent scientific  
19 evidence—meaning that they have at least two adequate and well controlled clinical trials  
20 supporting a particular health benefit claim about a particular product (hereafter referred  
21 to as "competent scientific evidence").

22 3. On each and every Osteo Bi-Flex product label and/or package, Defendants  
23 prominently state that Osteo Bi-Flex will "promote mobility", "renew cartilage",  
24 "maintain healthy connective tissue" and "improve joint comfort."

25 <sup>1</sup> The Osteo Bi-Flex line includes: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-  
26 Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-Flex  
27 Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced (collectively, "Osteo Bi-Flex"  
28 or "the Products").

1           4.     In making these affirmative representations, Defendants represent to each  
2 purchaser of Osteo Bi-Flex that they have competent scientific evidence that these  
3 Products are effective in relieving and reducing the three major symptoms of arthritis and  
4 other joint related ailments.

5           5.     Yet, Defendants do not possess such competent scientific evidence. In fact,  
6 the Osteo Bi-Flex products are not effective arthritis remedies. In short, Defendants have  
7 not obtained the necessary scientific proof with regard to each of the Osteo Bi-Flex  
8 products they market and sell in order to make the representations that they have made  
9 about each of these Products.

10          6.     As a result, Defendants are guilty of deceptive conduct in their marketing  
11 and sales of the Osteo Bi-Flex products.

12          7.     Defendants are also guilty of deception by omission in that, after  
13 affirmatively asserting that these Products are effective remedies against the three major  
14 symptoms of arthritis, Defendants had a duty to tell Plaintiff and the Class members that  
15 they did not have competent scientific evidence to support the efficacy representations  
16 that they make about the Osteo Bi-Flex products.

17          8.     By making representations on the box of each Osteo Bi-Flex product that it  
18 was an arthritis remedy, Defendants represented (and continue to represent) to Plaintiff  
19 and the Class members that they had competent scientific evidence to back up these  
20 assertions when they did not possess such evidence. These were material  
21 misrepresentations concerning the only reason that Plaintiff and the Class members  
22 would have purchased Defendants' Osteo Bi-Flex products—that they were proven by  
23 competent scientific evidence to be effective against the three major symptoms of  
24 arthritis.

25          9.     Other than to use the Osteo Bi-Flex products to relieve these symptoms of  
26 arthritis, there is no reason for Plaintiff or the Class members to have purchased these  
27 Products. Plaintiff and the Class members would not have purchased an Osteo Bi-Flex  
28

1 product without believing that it was a proven effective arthritis remedy and that it  
2 provided relief from the three major symptoms of arthritis.

3 10. Thus, through the act of purchasing one of Defendants' Osteo Bi-Flex  
4 products, Plaintiff and each Class member necessarily was deceived by Defendants'  
5 representations that these Products were effective arthritis remedies and would provide  
6 relief from the three major symptoms of arthritis.

7 11. Plaintiff and the Class members were also deceived by Defendants in that,  
8 after affirmatively asserting that these Products would provide relief from the three major  
9 symptoms of arthritis, Defendants committed deception by omission in that they failed to  
10 inform Plaintiff and the Class members that they did not possess competent scientific  
11 evidence to support these health benefit claims.

12 12. Every purchase of the Osteo Bi-Flex products was tainted with Defendants'  
13 deceptions in that just by looking at the package on the shelf or following the directions  
14 for use, Plaintiff and the Class members would have seen Defendants' deceptive  
15 representations.

16 13. Defendants' deceptive marketing and advertising, as well as the complete  
17 lack of any disclosure that no competent scientific evidence exists to substantiate the  
18 claim that Osteo Bi-Flex will "promote mobility", "renew cartilage", "maintain healthy  
19 connective tissue", and "improve[] joint comfort", is designed to cause consumers to buy  
20 Osteo Bi-Flex. Defendants' deceptive marketing and advertising campaign has  
21 succeeded. Estimated sales of dietary supplements for osteoarthritis, including Osteo Bi-  
22 Flex, approached \$820 million in 2006.<sup>2</sup>

23 14. Plaintiff brings this action on behalf of herself and other similarly situated  
24 California consumers who have purchased the Products to halt the dissemination of this  
25 false and misleading advertising message, correct the false and misleading perception it  
26

---

27 <sup>2</sup> 2007 Nutrition Industry Overview, Nutrition Business J., *available at* <http://newhope360.com/managing-your-business/2007-nutrition-industry-overview> (last visited Apr. 4, 2011).

1 has created in the minds of consumers, and obtain redress for those who have purchased  
2 Osteo Bi-Flex products. Plaintiff alleges violations of the Consumers Legal Remedies  
3 Act, the Unfair Competition Law, and Breach of Express Warranty created by  
4 Defendants' advertising, including false labeling.

5 **JURISDICTION AND VENUE**

6 15. The Court has original jurisdiction pursuant to 28 U.S.C. §1332(d)(2). The  
7 matter in controversy, exclusive of interest and costs, exceeds the sum or value of  
8 \$5,000,000 and is a class action in which members of the class are citizens of a state  
9 different from Defendants.

10 16. The Court has personal jurisdiction over Defendants because Defendants  
11 are authorized to do and conduct business in California. Defendants have marketed,  
12 promoted, distributed, and sold the Osteo Bi-Flex products in California, and Defendants  
13 have sufficient minimum contacts with the State and/or sufficiently avail themselves of  
14 the markets in this State through their promotion, sales, and marketing within this State  
15 to render the exercise of jurisdiction by the Court permissible.

16 17. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(a) and (b)  
17 because a substantial part of the events or omissions giving rise to Plaintiff's claims  
18 occurred while she resided in the judicial district. Venue is also proper under 18 U.S.C.  
19 §1965(a) because Defendants transact substantial business in this District.

20 **PARTIES**

21 18. Plaintiff Liliana Cardenas resides in Roseville, California. During the  
22 Class Period, Plaintiff Cardenas was exposed to and saw Defendants' claims by reading  
23 the Osteo Bi-Flex label, purchased the Osteo Bi-Flex products in reliance on those  
24 claims, and suffered injury in fact and lost money. Had Plaintiff Cardenas known the  
25 truth about Defendants' misrepresentations and omissions, Plaintiff would not have  
26 purchased and used the Osteo Bi-Flex products.

27 19. Defendant NBTY Inc. ("NBTY") is a corporation organized and existing  
28

1 under the laws of the state of Delaware. Defendant NBTY's headquarters is at 2100  
2 Smithtown Ave., Ronkonkoma, New York 11779.

3 20. Defendant Rexall Sundown Inc. ("Rexall") is a corporation organized and  
4 existing under the laws of the state of Florida. Defendant Rexall's headquarters is at  
5 2100 Smithtown Ave., Ronkonkoma, New York 11779.

6 21. Defendant NBTY together with Defendant Rexall Sundown, have  
7 manufactured, advertised, marketed, distributed, or sold, the Osteo Bi-Flex products to  
8 tens of thousands of consumers in California.

9 22. Plaintiff is informed and believes, and thus alleges, that at all times herein  
10 mentioned, each of the Defendants was the agent, employee, representative, partner, joint  
11 venturer, and/or alter ego of the other Defendant and, in doing the things alleged herein,  
12 was acting within the course and scope of such agency, employment, representation, on  
13 behalf of such partnership or joint venture, and/or as such alter ego, with the authority,  
14 permission, consent, and/or ratification of the other Defendant.

### 15 **FACTUAL ALLEGATIONS**

#### 16 ***The Osteo Bi-Flex Products***

17 23. Defendants develop, manufacture, market, distribute and sell a line of joint  
18 supplements under the Osteo Bi-Flex brand name. These Products include: (1) Osteo Bi-  
19 Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo Bi-Flex Double Strength;  
20 (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-  
21 Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex  
22 Advanced. Defendants began manufacturing, marketing and selling the Osteo Bi-Flex  
23 products nationwide in 1996.

24 24. The Osteo Bi-Flex products are sold in virtually every major food, drug,  
25 and mass retail outlet store in California, including, but not limited to: Wal-Mart, Costco  
26  
27  
28

Wholesale, Sam's Club, Target, and Walgreens. A 120-count bottle of Osteo Bi-Flex retails for approximately \$27.00. The following are screen shots of the Products:



25. Since the Products' launch, Defendants have consistently conveyed the message to consumers throughout California that Osteo Bi-Flex will "promote mobility", "renew cartilage", "maintain healthy connective tissue" and "improve[] joint comfort" simply by taking the recommended number of tablets each day. These claims are not substantiated by competent scientific evidence and are factually baseless.

26. The primary active ingredients in all the Osteo Bi-Flex products are glucosamine hydrochloride and chondroitin sulfate. Glucosamine is an amino sugar that the body produces and distributes in cartilage and other connective tissue. Chondroitin sulfate is a complex carbohydrate found in the body's connective tissues. There is no

1 competent scientific evidence that taking any of these ingredients—let alone through oral  
2 administration—results in the body metabolizing it into something that relieves the three  
3 symptoms of arthritis.

4 27. All of the Osteo Bi-Flex products also contain lesser amounts of other  
5 ingredients including hyaluronic acid, a component of synovial fluid found in the fluids  
6 of the eyes and joints; methylsulfonylmethane (“MSM”), an organic sulfur compound  
7 found in fruits, corn, tomatoes, tea, coffee, and milk; vitamin D; and Defendants’ 5-*loxin*  
8 advanced formula, a combination of MSM, chondroitin sulfate, vitamin C, hyaluronic  
9 acid, manganese collagen, and *boswellia serrata* (resin). There is no competent scientific  
10 evidence that taking any of these ingredients—let alone through oral  
11 administration—results in the body metabolizing it into something that relieves the three  
12 major symptoms of arthritis.

13 28. Contrary to the stated representations on all the Products’ labeling and  
14 packaging, Defendants do not possess (and have not possessed) competent scientific  
15 evidence that any of these ingredients, taken alone or in combination, are effective in  
16 treating the three major symptoms of arthritis or any other joint related ailments.

17 29. Despite inadequate testing and no scientifically valid confirmation that  
18 Osteo Bi-Flex is an effective joint treatment—let alone an effective treatment for *all*  
19 joints in the human body, for customers of *all* ages and for *all* stages of joint disease—  
20 Defendants state on the Products’ packaging and labeling that Osteo Bi-Flex will, *inter*  
21 *alia*: “promote mobility”, “renew cartilage”, “maintain healthy connective tissue” and  
22 “improve[] joint comfort”. Front, back, and side shots of a representative Osteo Bi-Flex  
23 product label appear as follows:

24  
25  
26 ...

27 ...



Copies of all Osteo Bi-Flex product labels are attached hereto as Exhibit A.

### *The Impact Of Defendants' Wrongful Conduct*

30. Despite the lack of competent scientific evidence, Defendants continue to unequivocally claim that Osteo Bi-Flex provides joint health benefits to all persons.

31. As the manufacturer and distributor of Osteo Bi-Flex, Defendants possess specialized knowledge regarding the content and effects of the ingredients contained in their Products and are in a superior position to learn of the effects—and have learned of the effects—their Products have on consumers.

32. Specifically, Defendants knew or should have known, but failed to disclose that they have no competent scientific evidence that their Osteo Bi-Flex products are effective in treating the three major symptoms of arthritis or other joint related ailments.

33. Notwithstanding these deceptive representations and material omissions, Defendants conveyed and continue to convey one uniform message: Osteo Bi-Flex is



1 effective in treating the three major symptoms of arthritis.

2 34. Plaintiff and Class members have been and will continue to be deceived or  
3 misled by Defendants' deceptive representations touting the effectiveness of the Osteo  
4 Bi-Flex products. Plaintiff purchased and used the Osteo Bi-Flex products during the  
5 Class period and in doing so, read, considered and based her decisions to buy the  
6 Products on the above cited label representations. Because the Products' sole purpose is  
7 to provide joint relief for the three major symptoms of arthritis, Defendants'  
8 representations and omissions were a material factor in influencing Plaintiff's decision to  
9 purchase and use the Osteo Bi-Flex products. There is no other reason for Plaintiff to  
10 have purchased the Osteo Bi-Flex products and Plaintiff would not have purchased the  
11 Products had she known that Defendants did not possess competent scientific evidence to  
12 support the claims that they made about these Products.

13 35. As a result, Plaintiff and the Class members have been damaged in their  
14 purchases of these Products and have been deceived into purchasing Products that they  
15 believed, based on Defendants' representations, were proven to be effective in treating  
16 the three major symptoms of arthritis and other joint related ailments when, in fact, they  
17 are not.

18 36. Defendants, by contrast, reaped enormous profits from their false  
19 marketing and sale of these Products.

### 20 **CLASS ALLEGATIONS**

21 37. Plaintiff brings this action on behalf of herself and all other similarly  
22 situated California residents pursuant to Rule 23(a), (b)(2), and (b)(3) of the Federal  
23 Rules of Civil Procedure and seeks certification of the following Class:

24 All California residents who, within the applicable statute of  
25 limitations, purchased the Osteo Bi-Flex products<sup>3</sup>.

26 <sup>3</sup>The Osteo Bi-Flex products include: (1) Osteo Bi-Flex One Per Day; (2) Osteo Bi-Flex Triple Strength; (3) Osteo  
27 Bi-Flex Double Strength; (4) Osteo Bi-Flex Triple Strength with Vitamin D; (5) Osteo Bi-Flex MSM; (6) Osteo Bi-  
28 Flex Energy Formula; (7) Osteo Bi-Flex Regular Strength; and (8) Osteo Bi-Flex Advanced.

1 Excluded from the Class are Defendants, their parents,  
2 subsidiaries, affiliates, officers and directors, and those who  
purchased the Osteo Bi-Flex products for the purpose of resale.

3 38. Members of the Class are so numerous and geographically dispersed that  
4 joinder of all Class members is impracticable. Plaintiff is informed and believes, and on  
5 that basis alleges, that the proposed Class contains many thousands of members. The  
6 precise number of Class members is unknown to Plaintiff.

7 39. Common questions of law and fact exist as to all members of the Class and  
8 predominate over questions affecting only individual Class members. The common legal  
9 and factual questions include, but are not limited to, the following:

- 10 • Whether Defendants have competent scientific evidence to support  
11 each of the claims that they made about their Products;
- 12 • Whether the claims discussed herein that Defendants made about  
13 their Products were or are misleading, or reasonably likely to deceive;
- 14 • Whether Defendants' alleged conduct violates public policy;
- 15 • Whether the alleged conduct constitutes violations of the laws  
16 asserted herein;
- 17 • Whether Defendants engaged in false and misleading advertising;
- 18 • Whether Plaintiff and Class members have sustained monetary loss  
19 and the proper measure of that loss;
- 20 • Whether Plaintiff and Class members are entitled to restitution,  
21 disgorgement of Defendants' profits, declaratory and/or injunctive relief; and
- 22 • Whether Plaintiff and Class members are entitled to an award of  
23 punitive and/or compensatory damages.

24 40. The claims asserted by Plaintiff in this action are typical of the claims of the  
25 members of the Class, as the claims arise from the same course of conduct by  
26 Defendants, and the relief sought is common. Plaintiff and Class members suffered  
27 uniform damages caused by their purchase of the Osteo Bi-Flex products manufactured,  
28

1 marketed, and sold by Defendants.

2 41. Plaintiff will fairly and adequately represent and protect the interests of the  
3 members of the Class. Plaintiff has retained counsel competent and experienced in both  
4 consumer protection and class litigation.

5 42. A class action is superior to other available methods for the fair and  
6 efficient adjudication of this controversy. The expense and burden of individual  
7 litigation would make it impracticable or impossible for proposed Class members to  
8 prosecute their claims individually. It would thus be virtually impossible for the Class,  
9 on an individual basis, to obtain effective redress for the wrongs done to them.  
10 Furthermore, even if Class members could afford such individualized litigation, the court  
11 system could not. Individualized litigation would create the danger of inconsistent or  
12 contradictory judgments arising from the same set of facts. Individualized litigation  
13 would also increase the delay and expense to all parties and the court system from the  
14 issues raised by this action. By contrast, the class action device provides the benefits of  
15 adjudication of these issues in a single proceeding, economies of scale, and  
16 comprehensive supervision by a single court, and presents no unusual management  
17 difficulties under the circumstances here.

18 43. In the alternative, the Class also may be certified because Defendants have  
19 acted or refused to act on grounds generally applicable to the Class thereby making  
20 appropriate final declaratory and/or injunctive relief with respect to the members of the  
21 Class as a whole.

22 44. Plaintiff seeks preliminary and permanent injunctive and equitable relief on  
23 behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin  
24 and prevent Defendants from engaging in the acts described, and requiring Defendants to  
25 provide full restitution to Plaintiff and Class members.

26 45. Unless a Class is certified, Defendants will retain monies received as a  
27 result of their conduct that were taken from Plaintiff and Class members. Unless a Class-

28

1 wide injunction is issued, Defendants will continue to commit the violations alleged, and  
2 the members of the Class and the general public will continue to be misled.

3 **COUNT I**  
4 **Violation of the Consumers Legal Remedies Act –Civil Code §1750 *et seq.***

5 46. Plaintiff re-alleges and incorporates by reference the allegations contained  
6 in the paragraphs above as if fully set forth herein.

7 47. This cause of action is brought under the Consumers Legal Remedies Act,  
8 California Civil Code §1750, *et seq.* (the “Act”). Plaintiff is a consumer as defined by  
9 California Civil Code §1761(d). Defendants’ Osteo Bi-Flex products are goods within  
10 the meaning of the Act.

11 48. Defendants violated and continue to violate the Act by engaging in the  
12 following practices proscribed by California Civil Code §1770(a) in transactions with  
13 Plaintiff and the Class which were intended to result in, and did result in, the sale of  
14 Defendants’ Osteo Bi-Flex products:

15 (5) Representing that [the Osteo Bi-Flex products have] . . . characteristics, . . .  
16 uses [or] benefits . . . which [they] do not have.

17 \* \* \*

18 (7) Representing that [the Osteo Bi-Flex products are] of a particular standard,  
19 quality or grade, . . . if [they are] of another.

20 \* \* \*

21 (9) Advertising goods . . . with the intent not to sell them as advertised.

22 \* \* \*

23 (16) Representing that [the Osteo Bi-Flex products have] been supplied in  
24 accordance with a previous representation when [they have] not.

25 49. Defendants violated and continue to violate the Act by representing and  
26 failing to disclose material facts on the Products labels and packages as described above  
27 when Defendants knew or should have known that the representations were  
28

1 unsubstantiated, false and misleading and the omissions were of material facts.

2 50. Pursuant to §1782(d) of the Act, Plaintiff and the Class seek a court order  
3 enjoining the above-described wrongful acts and practices of Defendants and for  
4 restitution and disgorgement.

5 51. Pursuant to §1782 of the Act, by letters dated June 14, 2011, Plaintiff  
6 notified Defendants in writing by certified mail of the particular violations of §1770 of  
7 the Act and demanded that Defendants rectify the problems associated with the actions  
8 detailed above and give notice to all affected consumers of Defendants' intent to so act.  
9 Copies of the letters dated June 14, 2011 are attached as Exhibit B.

10 52. Defendants failed to rectify or agree to rectify the problems associated with  
11 the actions detailed above and give notice to all affected consumers within 30 days of the  
12 date of written notice pursuant to §1782 of the Act. Therefore, Plaintiff further seeks  
13 claims for actual, punitive and statutory damages, as appropriate.

14 53. Defendants' conduct is malicious, fraudulent and wanton.

15 **COUNT II**  
16 **Violation of Business & Professions Code §17200, *et seq.***

17 54. Plaintiff re-alleges and incorporates by reference the allegations contained  
18 in the paragraphs above as if fully set forth herein.

19 55. As alleged herein, Plaintiff has suffered injury in fact and lost money or  
20 property as a result of Defendants' conduct because she purchased the Osteo Bi-Flex  
21 products.

22 56. In the course of conducting business, Defendants committed unlawful  
23 business practices by, *inter alia*, making the representations (which also constitute  
24 advertising within the meaning of §17200) and omissions of material facts, as set forth  
25 more fully herein, and violating Civil Code §§1572, 1573, 1709, 1711, 1770, Business &  
26 Professions Code §§17200, *et seq.*, 17500, *et seq.*, and the common law.

27 57. Plaintiff and the Class reserve the right to allege other violations of law,  
28

1 which constitute other unlawful business acts or practices. Such conduct is ongoing and  
2 continues to this date.

3 58. Defendants' acts, omissions, misrepresentations, practices and non-  
4 disclosures as alleged herein also constitute "unfair" business acts and practices within  
5 the meaning of Business and Professions Code §17200 *et seq.*, in that their conduct is  
6 substantially injurious to consumers, offends public policy, and is immoral, unethical,  
7 oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged  
8 benefits attributable to such conduct.

9 59. As stated in this complaint, Plaintiff alleges violations of consumer  
10 protection, unfair competition and truth in advertising laws resulting in harm to  
11 consumers. Plaintiff asserts violations of the public policy of engaging in false and  
12 misleading advertising, unfair competition and deceptive conduct towards consumers.  
13 This conduct constitutes violations of the unfair prong of Business & Professions Code  
14 §17200 *et seq.*

15 60. There were reasonably available alternatives to further Defendants'  
16 legitimate business interests, other than the conduct described herein.

17 61. Defendants' claims, nondisclosures and misleading statements, as more  
18 fully set forth above, are also false, misleading and/or likely to deceive the consuming  
19 public within the meaning of Business & Professions Code §17200 *et seq.*

20 62. Defendants' labeling and packaging as described herein, also constitute  
21 unfair, deceptive, untrue and misleading advertising.

22 63. Defendants' conduct caused and continues to cause substantial injury to  
23 Plaintiff and the other Class members. Plaintiff has suffered injury in fact and has lost  
24 money as a result of Defendants' unfair conduct.

25 64. Plaintiff, on behalf of herself, and all other similarly situated California  
26 residents, seeks restitution of all money obtained from Plaintiff and the members of the  
27 Class collected as a result of unfair competition, an injunction prohibiting Defendants  
28

1 from continuing such practices, corrective advertising and all other relief this Court  
2 deems appropriate, consistent with Business & Professions Code §17203.

3 **COUNT III**  
4 **Breach of Express Warranty**

5 65. Plaintiff re-alleges and incorporates by reference the allegations contained  
6 in the paragraphs above as if fully set forth herein.

7 66. Plaintiff, and each member of the Class, formed a contract with Defendants  
8 at the time Plaintiff and the other members of the Class purchased the Osteo Bi-Flex  
9 products. The terms of that contract include the promises and affirmations of fact made  
10 by Defendants on their Osteo Bi-Flex products' labels and packages, as described above.  
11 These representations constitute express warranties, became part of the basis of the  
12 bargain, and are part of a standardized contract between Plaintiff and the members of the  
13 Class on the one hand, and Defendants on the other.

14 67. All conditions precedent to Defendants' liability under this contract have  
15 been performed by Plaintiff and the Class.

16 68. Defendants breached the terms of this contract, including the express  
17 warranties, with Plaintiff and the Class by not providing products that could provide the  
18 benefits described above which was the only reason Plaintiff and Class members  
19 purchased the Osteo Bi-Flex products.

20 69. As a result of Defendants' breach of their warranty, Plaintiff and Class  
21 members have been damaged in the amount of the purchase price of the Osteo Bi-Flex  
22 products they purchased.

23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiff prays for a judgment:

- 25 A. Certifying the class as requested herein;  
26 B. Awarding Plaintiff and the proposed Class members damages;

- 1 C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiff  
2 and the proposed Class members;
- 3 D. Awarding declaratory and injunctive relief as permitted by law or equity,  
4 including enjoining Defendants from continuing the unlawful practices as  
5 set forth herein, and directing Defendants to identify, with court  
6 supervision, victims of their conduct and pay them restitution and  
7 disgorgement of all monies acquired by Defendants by means of any act or  
8 practice declared by this Court to be wrongful;
- 9 E. Ordering Defendants to engage in a corrective advertising campaign;
- 10 F. Awarding attorneys' fees and costs; and
- 11 G. Providing such further relief as may be just and proper.

12 **JURY DEMAND**

13 Plaintiff demands a trial by jury on all issues so triable.

14  
15 DATED: July 25, 2011

BONNETT FAIRBOURN FRIEDMAN  
& BALINT, PC

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**DOCTOR'S RECOMMENDATION**

Joint Care for your Active Lifestyle!

**The FIRST CHOICE in Premium Joint Care!**

Osteo Bi-Flex ONE PER DAY capsules are a revolutionary formula that promotes joint health, improves joint function, and helps you feel better. It contains the unique natural protein, **5-L-LOXIN Advanced™**, which is the only natural source of **5-LOXIN** available. **5-LOXIN** is a powerful anti-inflammatory that helps reduce joint pain and swelling. It also contains **Glucosamine HCl** and **Chondroitin Sulfate**, which are essential for joint health. **Osteo Bi-Flex** is the only joint supplement that contains **5-LOXIN**.

**Key to:**

- Promote Healthy Connective Tissue
- Reduce Cartilage
- Maintain Healthy Connective Tissue

**Osteo Bi-Flex**

**ONE PER DAY**

**5-LOXIN Advanced™**

**ENERGY FORMULA**

**SHOWS IMPROVEMENT IN Joint Comfort within 7 Days!**

**2 PER DAY 80 CAPSULES**

**DAILY SUPPLEMENT**

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- Reduce Cartilage
- Maintain Healthy Connective Tissue

**THE NATURAL Amino Acids CAN ALSO EXCESSIVE STRESS ON JOINTS. JOINTS ARE MADE OF CARBOHYDRATES AND PROTEIN. AMINO ACIDS ARE THE BUILDING BLOCKS OF PROTEIN. AMINO ACIDS ARE THE BUILDING BLOCKS OF PROTEIN.**

**THE FIRST CHOICE**  
In Preserving Joint Health

Osteo Bi-Flex ADVANCED CAPLETS are a revolutionary formula that contains Glucosamine, Chondroitin and MSM as well as the unique combination of amino acids including L-Lysine. L-Lysine is the only amino acid that is essential for the body. L-Lysine is the only amino acid that is essential for the body. L-Lysine is the only amino acid that is essential for the body.

**Helps to:**

- Promote Mobility
- Reduce Cartilage
- Maintain Healthy Connective Tissue



**Osteo Bi-Flex ADVANCED**

**75 GLUCOSAMINE CAPLETS**

**THE ONLY Leading Brand With Joint-Supporting, Feathering 5-LOXIN ADVANCED**

5-LOXIN ADVANCED is a highly potent concentrated extract of the active ingredient ASBA from the herb Boswellia serrata. 5-LOXIN ADVANCED contains high concentrations of ASBA, which is an important Bioactive Acid for helping with joint issues.

Osteo Bi-Flex ADVANCED is a potent synergistic combination of highly effective ingredients in Joint Care Science and the only leading brand containing Joint-Supporting 5-LOXIN.

Osteo Bi-Flex is manufactured under the highest standards for product quality, exceeding purity and potency.

Visit us at [WWW.OSTEOBIFLEX.COM](http://WWW.OSTEOBIFLEX.COM)  
or call toll free 1-800-444-4444 (1-800-444-4444)

See Bottom Panel for product points regarding our Authenticity Club.

GET THE MOST FROM YOUR CAPLETS BY TAKING 3 CAPLETS 3 TIMES A DAY WITH MEALS. DO NOT TAKE WITH ALCOHOL OR OTHER DRUGS. IF YOU ARE TAKING OTHER DRUGS, CONSULT YOUR DOCTOR FIRST. IF YOU ARE TAKING OTHER DRUGS, CONSULT YOUR DOCTOR FIRST. IF YOU ARE TAKING OTHER DRUGS, CONSULT YOUR DOCTOR FIRST.

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**Helps to:**

- Promote Mobility
- Reduce Cartilage
- Maintain Healthy Connective Tissue



**Osteo Bi-Flex DOUBLE STRENGTH**

**150 GLUCOSAMINE CAPLETS**

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**150 GLUCOSAMINE CAPLETS**

**THE ONLY Leading Brand With Joint-Supporting, Feathering 5-LOXIN ADVANCED**

5-LOXIN ADVANCED is a highly potent concentrated extract of the active ingredient ASBA from the herb Boswellia serrata. 5-LOXIN ADVANCED contains high concentrations of ASBA, which is an important Bioactive Acid for helping with joint issues.

Osteo Bi-Flex DOUBLE STRENGTH CAPLETS are a potent synergistic combination of highly effective ingredients in Joint Care Science and the only leading brand containing Joint-Supporting 5-LOXIN.

Osteo Bi-Flex is manufactured under the highest standards for product quality, exceeding purity and potency.

Visit us at [WWW.OSTEOBIFLEX.COM](http://WWW.OSTEOBIFLEX.COM)  
or call toll free 1-800-444-4444 (1-800-444-4444)

See Bottom Panel for product points regarding our Authenticity Club.

GET THE MOST FROM YOUR CAPLETS BY TAKING 3 CAPLETS 3 TIMES A DAY WITH MEALS. DO NOT TAKE WITH ALCOHOL OR OTHER DRUGS. IF YOU ARE TAKING OTHER DRUGS, CONSULT YOUR DOCTOR FIRST. IF YOU ARE TAKING OTHER DRUGS, CONSULT YOUR DOCTOR FIRST. IF YOU ARE TAKING OTHER DRUGS, CONSULT YOUR DOCTOR FIRST.

**THE NATURAL Amino Acids CAN ALSO EXCESSIVE STRESS ON JOINTS. JOINTS ARE MADE OF CARBOHYDRATES AND PROTEIN. AMINO ACIDS ARE THE BUILDING BLOCKS OF PROTEIN. AMINO ACIDS ARE THE BUILDING BLOCKS OF PROTEIN.**

**THE FIRST CHOICE**  
In Preserving Joint Health

Osteo Bi-Flex DOUBLE STRENGTH CAPLETS are a revolutionary formula that contains Glucosamine, Chondroitin and MSM as well as the unique combination of amino acids including L-Lysine. L-Lysine is the only amino acid that is essential for the body. L-Lysine is the only amino acid that is essential for the body. L-Lysine is the only amino acid that is essential for the body.

**Helps to:**

- Promote Mobility
- Reduce Cartilage
- Maintain Healthy Connective Tissue



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